Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1654

PETER BRANTI, As Public Defender
of Rockland County

Petitioner,

vs

AARON FINKEL AND ALAN TABAKMAN,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED
APRIL 30, 1979
CERTIORARI GRANTED JUNE 25, 1979

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Please note that the opinions and judgments of the United States District Court and the United States Circuit Court of Appeals for the Second Circuit have already been printed as appendix to the Petition For Certiorari at pages 1A through 32A of said appendix.

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No. 78 Civ. 14

Date	NR.	Proceedings
1-3-78	1	Complaint.
1-4-78	2	Plaintiffs' exparte motion for Temporary Restraining Order and Preliminary Injunction.
1-12-78	5	Affidavit in opposition to Plaintiffs' application.
9-5-78	20	Answer.
9-30-78	21	Opinion granting injunction.
10-10-78	23	Judgment for Plaintiffs issuing permanent injunction
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11-1-78	26	Stipulation re: transmittal of sealed portions of trial record to United States Court of Appeals.

U. S. DISTRICT COURT
SOUTHERN DISTRICT, NEW YORK

----------X

AARON FINKEL and ALAN TABAKMAN,

Plaintiffs,

against

PETER BRANTI as Public Defender, Rockland County, and SAMUEL COLEMAN, Chairman, and JOHN MURPHY, DIANE BELJEAN, IRWIN BERNSTEIN, HEZEKIAH EASTER, THEODORE DUSANENKO, JAMES DAMIANI, EUGENE GROGAN, THOMAS MORAHAN, ANNE O'SULLIVAN, ISAAC GOODFRIEND, SANFORD RUBENSTEIN, HERBERT REISMAN, SAMUEL ZELMAN GDANSKI, JOHN MEEHAN, PHILIP ROTELLA, JOHN GRANT and RICHARD SULLIVAN, comprising the Rockland County Legislature,

Defendants.

----------X

78-Civ-14

Judge Broderick

ORDER TO SHOW CAUSE FOR TEMPORARY RESTRAINING ORDER & A PRELIMINARY INJUNCTION

This cause came on to be heard on the application of plaintiffs upon the verified complaint herein and the affidavits of AARON FINKEL and DAVID MAC RAE WAGNER attached thereto, for a temporary restraining order, pursuant Rule 65 FRCP; and, it appearing to the court therefrom that immediate and irreparable injury, loss and damage will result to the plaintiffs before notice can

be given and the defendants or their attorneys can be heard in opposition to the granting of a temporary restraining order for the reason that the loss of first amendment freedoms for even minimal periods of time constitutes irreparable injury, it is

ORDERED, that defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them are hereby restrained from terminating or attempting to terminate, alter, change or in any way affect plaintiffs current employment status as of December 31, 1977 as Assistant Public Defenders for the County of Rockland, and it is further

ORDERED, that this order expire at 10 a.m. on 1/13, 1978, unless within said time it is for good cause shown extended for a longer period, or unless defendant consents that it may be extended for a longer period; and it is further

ORDERED, that Plpff file a bond as security in the amount of $500.00 by January 6, 1978;

ORDERED, that plaintiffs' motion for a preliminary injunction be set for hearing on 1/6, 1978, at 4:00 p.m., of that day or as

soon thereafter as counsel can be heard, in the United States District courtroom #401 in the city of New York, state of New York; before Honorable Vincent Broderick;

FURTHER ORDERED, that copies of this order be personally served upon Peter Branti and Samuel Coleman on or before 12 Noon on 1/5/78 and that copies thereof be mailed special delivery to each of the other named defendants on or before 1/4/78 at 5:00 p.m.

This order issued at 10:20 a.m. this 4th (1/4/78) day of January, 1978.

S/
UNITED STATES DISTRICT JUDGE

Same Caption

APPLICATION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs apply to the court, upon the verified complaint herein and the affidavits of AARON FINKEL and DAVID MAC RAE WAGNER attached hereto, for a temporary restraining order against the above-named defendants, their agents, servants, attorneys and privies, pending the hearing and decision of plaintiffs' motion for a preliminary injunction, enjoining them from terminating or attempting to terminate, alter, change or in any way affect plaintiffs current employment status as Assistant Public Defenders for the County of Rockland.

Yours, etc.

FREEDMAN, WRAY, WAGNER,
& TABAKMAN & FINKEL
Attorneys for Plaintiffs
11 Stokum Lane
New City, New York 10956
(914) 638 - 1400

Dated: New City, NY
January 3, 1978

Same Caption

AFFIDAVITS IN SUPPORT OF TEMPORARY RESTRAINING ORDER

STATE OF NEW YORK)
ss.:
COUNTY OF ROCKLAND)

DAVID MAC RAE WAGNER, being duly sworn, deposes and says:

1. Deponent is an attorney at law admitted to practice in the United States District Court, Southern District New York, is fully familiar with the facts and circumstances surrounding this action, and makes this affidavit in support of plaintiffs application for Temporary Restraining Order.

2. Plaintiffs bring this action pursuant to the first and fourteenth amendments of the Constitution of the United States interpreted by the United States Supreme Court in ELROD vs BURNS, 427 US 347, 96 S. Ct., 2673, 49L Ed.2 547.

Plaintiffs are non-policy making, non-confidential government employees satisfactorily performing their jobs and, therefore, cannot be discharged or threatened with discharge solely because of their political beliefs, which proposition

stated in the concurring opinions of Justices STEWART and BLACKMUN represents the "lowest common denominator" of the ELROD ruling, Ramey vs Harber, 431 F. Supp. 657 (D.C. W.D. Va. 1977, P. 662).

3, Plaintiffs' threatened discharge by defendants threatens their First Amendment freedoms and injunctive relief therefore clearly lies; "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury", Elrod vs Burns, Supra, P. 373.

Plaintiffs should not be required to give further notice to defendants of this application for a temporary restraining order. As set forth in exhibit A annexed hereto, and the complaint herein, plaintiffs notified defendants of their intention to remain employed in their present capacity; plaintiffs further, on January 3, 1978, reported for duty and were subsequently asked to return their files and informed that their respective court calendars for which they were to represent the Public Defender's office had been adjourned.

WHEREFORE, it is respectfully submitted that a temporary restraining order be issued

restraining the defendants, their agents and employees, from terminating or attempting to terminate, alter, change or in any way affect plaintiffs current employment status as Assistant Public Defenders for the County of Rockland.

S/
DAVID MAC RAE WAGNER

Sworn to before me this

3rd day of January, 1978.

S/

Same Caption AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss:

AARON FINKEL, being duly sworn, deposes and says:

For the past seven years I have served without interruption as an Assistant Public Defender of Rockland County, part-time and full-time, under two Public Defenders of different political persuasion and legislatures of both Democrat and Republican control. I am 43 years old, have been employed in public positions for more than 20 years and have a vested pension interest.

Almost incredibly, my employment has been terminated without notice or hearing establishing just cause, and solely for political reasons, in violation of the First and Fourteenth amendments to the Constitution of the United States. On December 30, 1977, I joined with Assistant Public Defender Alan Tabakman in serving a demand for clarification and request to be continued. On January 3, 1978 Mr. Tabakman and I reported for work and obtained our files for the day but were asked to return

them. We did. We have still not been officially notified that we were terminated but our names have been replaced with others on the wall of the Public Defender's Office where messages and other memoranda are left for us.

In December, 1977 I was shocked to read in the Rockland County Journal News, the local newspaper, that the Democratic Caucus of the Rockland County Legislature had chosen various persons to replace all but two of the Assistant Public Defenders. I was one of those named to be replaced. A copy of that article is annexed. Never was I otherwise advised, formally or informally, that I was to be terminated or the reasons therefor.

When I was first employed as Assistant Public Defender, March 26, 1971, a duly sworn appointment dated March 29, 1971 was filed by Arnold Becker, Public Defender, with the County Clerk of Rockland County. A copy of that sworn and filed appointment is annexed. It would appear that my appointment was no less than permanent as permitted by Section 716 of the County Law of the State of New York.

Concurrently with my swearing in, the

Public Defender filed a Report of Personnel Change dated March 26, 1971, with the Rockland County Personnel Office. That form, a copy of which is also annexed, designates the appointment as being"PERMANENT" rather than any of the other alternatives provided by the form such as "PROVISIONAL", "TEMPORARY, UNTIL _____", or TERM OF OFFICE, UNTIL ____".

Read together, the two aforementioned documents are incapable of inference other than that I was appointed to a permanent position.

By letter dated April 2, 1971, Herschel Greenbaum, Chairman of the Rockland County Legislature, was notified by the Public Defender that I had been appointed to the position of Assistant Public Defender. That letter, a copy of which is annexed, likewise does not in any way limit the term of my appointment.

Mr. Becker, a Democrat, was not re-appointed Public Defender by the Rockland County Legislature when his term expired, December 31, 1971. Frank P. Barone, a Republican, was appointed by the then Republican controlled legislature, to a six year term, commencing January 1, 1972.

Both Mr. Becker and his successor, Mr. Barone, maintained non-partisan offices. At the time I was an enrolled Republican appointed by Mr. Becker, a Democrat.

Mr. Barone continued my employment without question and he duly filed a Report of Personnel Change with the Rockland County Personnel Office dated January 5, 1972 and sworn Appointment designating me Senior Assistant Public Defender. Those forms, copies of which are annexed, also showed me to be "PERMANENT" rather than any other of the provisional or temporary alternatives provided by the form.

Effective January 1, 1973, by Report of Personnel Change dated June 22, 1973, I was given a raise in salary. A copy of that form, filed with the Rockland County Personnel Office, is also annexed. It reveals no change in status. I was never advised of any change from permanent to temporary status until it was alleged in December 1977 in order to terminate me.

More than five years after my appointment and on or about Sepbember 5, 1975 another personnel form was filed designating me Assistant Public Defender and increasing my salary and hours. That form, then filed without my knowledge of its contents, showed

"TERM OF OFFICE, UNTIL 12/31/77". That error, for whatever reason, was again made in a similar form filed March 19, 1976. Now, only nine months later, it seems that it is sought as justification for terminating my employment in order to appoint a party faithful.

It would be absured to believe that the mere filing of a paper with the Office of Personnel, without my knowledge, can change the status created by the sworn filed appointment and original personnel document. The Public Defender himself was surprised to learn that his secretary began enterring termination dates for his employees concurrent with his own term. Annexed is a letter of Frank P. Barone, Public Defender, Rockland County, dated December 30, 1977 wherein he states the most recent forms mistakenly indicated I was to serve a term concurrent with his. The recent documents should be ineffective as a matter of law as well as for mistake of fact, whether or not motive is suspect.

Except for the two recent forms filed without my knowledge and by mistake on the part of the Public Defender himself, all sworn appointments and Reports of Personnel Change clearly showed me to be a permanent employee.

My service as an Assistant Public Defender had been highly regarded. I was commended by both Public Defenders under whom I served. Mr. Barone's letter dated December 30, 1977 expresses grateful appreciation for my services to the Office of Public Defender of the County of Rockland with the highest degree of professional responsibility and excellence. He further states in that letter that he would have been delighted to continue my employment.

I anticipate that it will be argued that I was serving a term that expired December 31, 1977. That is not true, as shown. However, even if it could conceivably be so held, it does not lend justification or propriety to the failure to continue my employment, flagrently violating my First and Fourteenth amendment rights. The United States Supreme Court has held that even an untenured teacher is entitled to be rehired, at the expiration of his contract term, if able to prove in some way that the only reason for not extending his contract was the teacher's exercise of First amendment rights. PERRY v. SINDERMANN, 408 U.S. 593(1972) S. Ct.

In the Perry case, not only did the teacher have no tenure in office but he was terminated at the expiration of a contractual term. This leaves, in the case at bar, only the issue of First amendment rights, which can be put to rest quickly. I do not think it will be denied that the Assistant Public Defender positions are being dealt with as political patronage. The legislators have openly treated the jobs as such. I have read correspondence between legislators showing their political involvement. The Rockland County Journal News has reported "The selections were actually made by the Democratic Caucus composed of the party's 11 county legislators." The political affiliation of the appointees, the documented statements of the legislators, the testimony of certain of the appointees, their proponents and the legislators, will overwhelmingly show my termination and replacement was the result of political patronage practise.

Patronage practise of discharging non-policy making employees for belonging to the losing political party was held invalid under the First and Fourteenth amend-

ments to the Constitution of the United States, ELROD v. BURNS, 427 U.S. 347, 96 S. Ct. 2673, 49 LED 2547(1976): RAMEY v. HARBER, 431 F. Supp. 657 (D. Ct., W. D. Va., 1977). An Assistant Public Defender enjoys no policy making functions. As an Assistant Public Defender I defended indigent clients of the Office of the Public Defender. The clients were selected by the Public Defender ~~or~~ the court using guidelines over which I had no control. I had no authority but to work in the various courts and on cases as the Public Defender directed. All policy was fixed by the Public Defender himself and articulated in memoranda or at periodic meetings. Every letter or document prepared by an Assistant Public Defender was reviewed by the Public Defender. The Public Defender was the sole administrator of the office and he made that fact well known.

If my employment is not continued and this litigation successful, the County of Rockland, my family and myself will suffer irreparable injury. The cost to the county of paying backpay and other damages without having the benefit of my employment will be substantial. My family will be without the

excellent health insurance provided by the county for its employees. That coverage, on a private basis, is extremely costly and there is then question as to whether the same coverage can be had. Naturally my family will be deprived of my week to week earnings in the interim. For this reason, I am moving by Order to Show Cause. No previous application has been made.

In short, the Democratic Caucus, with its life and death type of power of appointment of the Public Defender, has tried unlawfully to name all Assistant Public Defenders. The termination of my employment is violative of my First and Fourteenth amendment rights as expressed in ELROD v. BURNS, 427 U.S. 347, 96 S. Ct. 2673, 49 LED 2574(1976); PERRY v. SINDERMANN, 408 U.S. 593(1972) S. Ct.; and RAMEY v. HARBER, 431 F. Supp. 657 (D. Ct.; W. D. Va. 1977). Irreparable harm will result to the County of Rockland and myself if I am not continued in employment pending litigation. Certainly, employed for seven years under two Public Defenders in varying capacities as Assistant Public Defender, irrespective of their

politics or mine or the political control of the legislature, I had a legitimate "expectancy" of re-employment. PERRY v. SINDERMANN, 408 U.S. 593(1972) supra.

Dated: January 3, 1978
Spring Valley, New York

S/
AARON FINKEL

Sworn to before me this
3rd day of January, 1978.

S/
Notary Public

Same Caption

VERIFIED COMPLAINT

AARON FINKEL and ALAN TABAKMAN, by their attorneys, FREEDMAN, WRAY, WAGNER, TABAKMAN and FINKEL, complaining of the defendants herein, allege as follows:

1. Plaintiffs are Assistant Public Defenders employed by the County of Rockland; plaintiff AARON FINKEL was so appointed on March 26, 1971 (see exhibit A annexed hereto); plaintiff ALAN TABAKMAN was appointed on September 5, 1975.

2. Defendant, PETER BRANTI, is the Public Defender designee of the County of Rockland and upon information and belief will be appointed to that position by the County Legislature on or about January 3, 1978.

3. Defendants COLEMAN, MURPHY, BELJEAN, BERNSTEIN, EASTER, DUSANENKO, DAMIANI, GROGAN, MORAHAN, O'SULLIVAN, GOODFRIEND, RUBENSTEIN, REISMAN, GDANSKI, MEEHAN, ROTELLA, GRANT and SULLIVAN comprise the legislature of the County of Rockland having been elected as County Legislators for a legal term commencing on January 1, 1978.

4. On or about December 24, 1977, plaintiffs became aware through an article in the local

newspaper, the Journal-News, that defendant BRANTI had been selected to be the next Public Defender of the County of Rockland and, upon his appointment to that position, he would attempt to terminate their positions as Assistant Public Defenders (see exhibit B annexed hereto).

5. After learning of this attempted termination of their positions, plaintiffs, on December 30, 1977, informed defendant BRANTI in writing of their willingness and intent to continue in their positions as Assistant Public Defenders (see exhibit C annexed hereto).

6. On January 3, 1973, plaintiffs reported to the office of the Public Defender and were assigned court calendars in their capacity of Assistant Public Defenders for January 3, 1978. These assignments were made by the Chief Assistant Public Defender and subsequently plaintiffs were called by him and were advised that the court calendars at which they were to appear had been adjourned and they were directed to return their files to the Public Defender's office.

7. Based upon information and belief conversation with defendant BRANTI and articles appearing in the local newspaper, plaintiffs truly believe that it is the intention of the defendants to attempt to terminate plaintiff's employment because plaintiffs are Republicans and defendant BRANTI, a Democrat, having been appointed by a Democratic majority of the County Legislature, which wishes to replace plaintiffs with members of their own polital party.

8. The position of Assistant Public Defender is a non-policy making, non-confidential governmental position. Plaintiffs have satisfactorily performed their duties in their positions as Assistant Public Defenders and continue to do so (see exhibit D and annexed hereto).

9. Defendant's threatened termination of plaintiff's positions as Assistant Public Defenders without notice or hearing and without due cause is in violation of plaintiffs' federal rights pursuant to the first and fourteenth amendments of the United States Constitution and, therefore, raises

a material federal question.

WHEREFORE, plaintiffs pray for an injunction to be issued by this Court permanently enjoining defendants, their agents and employees, from terminating or attempting to terminate, alter, change or in any way affect plaintiffs current employment status as Assistant Public Defenders for the County of Rockland.

Yours, etc.,

FREEDMAN, WRAY,
WAGNER, TABAKMAN
and FINKEL
Attorneys for
Plaintiffs
11 Stokum Lane
New City, New York 10956
(914) 638-1400

Same Caption VERIFIED ANSWER

78 Civ. 14

Defendants by their attorney, MARC L. PARRIS, ESQ., County Attorney for the County of Rockland, answering the Plaintiffs' complaint allege as follows:

1. Denies knowledge sufficient to form a belief as to the allegations contained in paragraphs designated "4", "5" and "6" of Plaintiffs' complaint.

2. Denies the allegations contained in paragraph designated "7" of Plaintiffs' complaint and states as a matter of fact that Plaintiff, Aaron Finkel, changed his party registration to Democratic in February 1977 to take effect January 1, 1978.

3. Denies the allegations contained in paragraphs designated "8" and "9" of Plaintiffs' complaint.

4. Denies the allegations contained in paragraph designated "1" of Plaintiffs' complaint, except to admit that the Plaintiffs' are Assistant Public Defenders solely by force of the temporary restraining order issued in this action.

WHEREFORE, Defendants pray that the

Plaintiffs' complaint be in all respects dismissed and that Plaintiffs' application for a preliminary and permanent injunction be in all respects denied.

Dated: New City, New City
February 17, 1978

Yours, etc.,

MARC L. PARRIS, ESQ.
County Attorney,
County of Rockland
Attorney for Defendants
Office & P. O. Address
County Office Building
11 New Hempstead Road
New City, New York 10956
Tel. No. (914)638-0500

TO: FREEDMAN, WRAY, WAGNER & TABAKMAN, ESQS.
Attorneys for Plaintiff
11 Stokum Lane
New City, New York 10956
Att.: David M. Wagner, Esq.

Same Caption AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss.:

ILAN SCHOENBERGER, being duly sworn, deposes and says:

That I am the Deputy County Attorney for the County of Rockland and make this affidavit in opposition to plaintiff's application for a temporary restraining order and preliminary injunction to restrain the County of Rockland in altering the plaintiff's current employment status. Attached hereto as exhibits are the affidavits of Public Defender, PETER BRANTI, Election Commissioner, ALEXANDRIA LEFEVER, and Personnel Officer, JAMES K. ANDERSON.

That for the plaintiffs to succeed in their application, they must show irreparable injury and the probability of success on the merits. If that cannot be shown, then the plaintiffs cannot succeed in obtaining the preliminary injunction.

The plaintiffs have alleged in their moving papers that they have been terminated because of their political beliefs and that this threatened or actual termination affects their first amendment freedoms. They cite the

case of ELROD v. BURNS, 427 U. S. 347, 49 L. Ed. 2d 547, 96 S.Ct. 2673, in support of their allegations. In the Elrod case, the respondents were Sheriff's deputies and low level employees discharged or threatened with discharge because of their non-affiliation with the political party of the newly elected Sheriff. That case exhibited facts which may be construed as insidious to the political process. The case states that as a condition to be retained in their employment they had to swear allegiance to the political party of the newly elected Sheriff, be affiliated with that party or be sponsored by that party. They also were coerced into supporting that party financially. There is no such allegation in plaintiff's affidavit herein.

That there is no infringement upon plaintiff's first amendment rights since the defendants at no time coerced the plaintiffs into supporting their party. The defendants at no time conditioned the retention of the plaintiffs on the support of the Democratic Party in Rockland County.

As was stated in MARKS V. UNITED STATES:

> "When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds . . .'" MARKS V. UNITES STATES, 430 U.S. 188, 193, 97 S.Ct. 990, 993, 51 L. Ed. 2d 260 (1977).

In the ELROD case, Mr. Justice Stewart concluded as follows:

> "The single substantive question involved in this case is whether a nonpolicymaking, nonconfidential government employee can be discharged or threatened with discharge from a job that he is satisfactorily performing on the sole ground of his political beliefs. I agree with the plurality that he cannot. See PERRY V. SINDERMANN, 408 U.S. 593, 597-598. 92 S.Ct. 2694, 33 L. Ed. 2d 570." 427 U.S. at 375, 96 S.Ct. at 2690.

In the instant case, in order to fall within the holding of ELROD supra, four things must exist. First, the plaintiffs must be non-policymaking governmental employees. Secondly, the plaintiffs must be non-confidential governmental employees. Thirdly, they must be satisfactorily performing their job and fourthly, they must be discharged on the sole ground of their political beliefs.

Both plaintiffs are policymaking governmental employees. They appear at the Public Defender's Office and receive files to represent the Public Defender's Office at various Court appearances. Their latitude and discretion is broad. They appear in Court and upon each case, formulate a case by case policy on how to best represent the interests of those accused of crimes.

As was stated in ELROD, supra, 427 U.S. at pg. 367, 49 L.Ed. 2d, at pg. 562:

> "Non-policymaking individuals usually have only limited responsibility and are therefore not in a position to thwart the goals of the in-party."

And furthermore, at 427 U.S. 368 49 L.Ed. 2d 562:

> "An employee with responsibilities that are not well defined or are of broad scope more likely functions in a policy-making position. In determining whether an employee occupies a policymaking position, consideration should also be given to whether the employee acts as an advisor or formulates plans for the implementation of broad goals."

This is not a case of first impression. As was held in the matter of CLARKE v. O'BRIEN, 91 Misc. 2d 190, aff'd. 56 AD 2d 869, the case

involving an Assistant District Attorney who was discharged when a new District Attorney took office, the Court held at page 193:

> "The District Attorney cannot be expected to personally discharge his constitutional and statutory function in every case. For this reason he is authorized to appoint assistants and delegate and specify their duties.
>
> Subdivision 1 of section 702 of the County Law provides for the appointment of assistants by the District Attorney within his budgetary appropriation, and authorizes him to revoke performance by the Assistant District Attorney of such duties pertaining to the office as the District Attorney shall direct. Subdivisions 3 and 4 authorize the Assistant District Attorney to perform the duties of the District Attorney during the latter's absence or inability, and authorize designation of the order in which the assistants shall act where more than one is appointed.
>
> Petitioner and his former colleagues thus occupy unique and sensitive positions in the public service and, notwithstanding the number of assistants appointed, any one of them may by statute be called upon to discharge the powers and duties of their elected principal. The nature of the position requires that

> respondent be entitled to appoint and remove his assistants at will during his term."

And furthermore, the Court held:

> "To the extent that that the assistants discharge the statutory duties of the principal in the prosecution of crimes, the District Attorney must be the sole judge of their performance.
>
> The administrative organization and structure of the prosecutor's office and the particular assignment therein of an individual assistant cannot operate to convert an office posessing the statutory attributes of a deputyship into a subordinate clerical position. The criteria to be applied is the statutory authorization and the duties required of and delegated to petitioner and his compeers by the various duties statements."

An attorney is one of the prime examples of confidential relationship. There exists a confidential relationship between the Assistant Public Defender and the clients he represents. There also exists a confidential relationship between the Assistant Public Defender and his appointing officer, namely, the Public Defender. The Assistant Public Defender is a personal extension of the Public Defender in

the Court where he is representing the Public Defender's Office. In that Court, he formulates such policies and makes such determinations as he feels are necessary to accomplish his job. Since the position of Assistant Public Defender is a policy-making position and a confidential position, it does not come within the narrow construction of ELROD V. BURNS, supra.

The question as to whether Mr. Tabakman and Mr. Finkel are satisfactorily performing their jobs is a question for proper determination by the present Public Defender at whose pleasure they serve. Furthermore, the grounds for dismissal of Mr. Tabakman and Mr. Finkel are not the "sole ground" of their political beliefs. Their dismissal furthers a legitimate governmental interest as is shown in these papers.

That it is a matter of evidence that plaintiff, AARON FINKEL, is in fact, a Democrat (see affidavit of Alexandria Lefever).

That the Public Defender, PETER BRANTI, upon assuming office and prior thereto, reviewed the qualifications of the applicants for the positions of Assistant Public Defender and made valued judgments thereon.

That Public Defender, PETER BRANTI, was a former Chief Assistant District Attorney of Rockland County prior to assuming his duties as Public Defender and as such, was in a position during the past few years of being able to make valued judgments on the qualifications of various Assistant Public Defenders during that time.

That aside from the qualifications of plaintiff, ALAN TABAKMAN, or lack thereof, an obvious conflict of interest exists by his continuing as Assistant Public Defender. Attached hereto is New York State Bar Association Ethics Opinion No. 232 of 1972 which states that it is a conflict of interest for an Assistant Public Defender and a Town Justice to be law partners.

That on November 8, 1977, William Wray was elected Town Justice of the Town of Clarkstown, County of Rockland. Mr. Wray is the law partner of plaintiff, ALAN TABAKMAN. For ALAN TABAKMAN to continue his duties as Assistant Public Defender would give rise to a conflict of interest.

That upon information and belief, at the times these papers were served, ALAN TABAKMAN was and still remains a member of the firm of FREEDMAN, WRAY, WAGNER & TABAKMAN and still

remains a member of the firm today.

That in the ELROD case, the practice of the Sheriff's Department of Cooke County was to dismiss one-half of the Sheriff's Department solely on a political basis.

In Rockland County, as is shown by the plaintiff's papers, the Public Defender's Office historically has been a bi-partisan office.

That in addition to the plaintiffs not being retained as Assistant Public Defenders, other assistants of the previous Public Defender were not reappointed as well. Some of those assistants were Democrats. Therefore, the non-reappointments of certain Assistant Public Defenders were not made on a political basis. Furthermore, certain Public Defenders were reappointed including a person with no political affiliation.

The Public Defender's term expired on December 31, 1977. A new Public Defender was appointed. The new Public Defender has a right to terminate those assistants who serve at his pleasure. No present or former Assistant Public Defender was ever coerced into either joining the Democratic Party of Rockland County, supporting the Democratic Party of Rockland County or requesting sponsorship

by the Democratic Party of Rockland County as was the case in ELROD V. BURNS. There was no loss of first amendment freedom at any time. The Legislature of Rockland County changed its political majority in 1974 to Democratic. That resulted in no political dismissals from the Office of the Public Defender. His assistants were retained and at no time ever threatened with the lost of their jobs for their failure to join another political party.

That the present Public Defender has hired (1) a female attorney of the highest reputation as one of his new assistants; (2) has hired a former Assistant District Attorney; (3) has hired a former Assistant County Attorney as a new Assistant Public Defender; (4) has hired a former District Attorney and (5) has hired a former aid to the Special Prosecutor.

That at no time was the position of Assistant Public Defender to be considered a permanent position. That Plaintiff, FINKEL, has offered in his affidavit, an affidavit dated January 5, 1972 by the former Public Defender, FRANK BARONE, in which he has appointed AARON FINKEL as a senior Assistant Public Defender commencing January 1, 1972.

Since Mr. Finkel started his employment as an Assistant Public Defender almost one year prior, if there was permanency to his position what was the necessity of reappointing Mr. Finkel? The only conclusion that can be drawn is that Mr. Finkel's term was subject to reappointment by a new Public Defender, FRANK BARONE, when he took office on January 1, 1972.

That the temporary restraining order should be lifted and a preliminary injunction should be denied on the basis that if the plaintiffs cannot show deprivation of first amendment rights; that the probability of plaintiff's success on the merits is small since the facts of this case can be distinguished very clearly from ELROD V. BURNS, supra.

WHEREFORE, deponent prays that the temporary restraining order be lifted and that a preliminary injunction be denied.

S/
ILAN SCHOENBERGER

Sworn to before me
this 6th day of
January, 1978.

S/

NEW YORK STATE BAR ASSOCIATION
ONE ELK STREET ALBANY NEW YORK 12207

COMMITTEE ON PROFESSIONAL ETHICS

Opinion #232 - 2/25/72
(5-72) Topic: Town Justice Partnership with Assistant Public Defender; Conflicts

Digest: The limitations upon the practice of a Town Justice prevent his partner from being Assistant Public Defender

Code*: EC 9-2; 9-6

Canons of Judicial Ethics: 31

QUESTION

May partners hold respectively the offices of town justice and assistant public defender?

OPINION

It would be incongruous to expect a Town Justice to also be an Assistant Public Defender. The position of Public Defender carries with it the duty to represent indigent defendants in criminal cases and may result in the representation of defendants in the Court of the Town Justice or a Court of higher jurisdiction.

Such a criminal practice is prohibited to a Town Justice. N.Y. State 146 (1970); N.Y. State 146 (a) (1970). See also N.Y. State 214 (1971); N.Y. State 228 (1972).

The relations of partners in a law firm are such that neither the firm nor any member or associate thereof may accept any professional employment which any member of the firm cannot properly accept. N.Y. State 203 (1971); EC 9-2; 9-6; Canons of Judicial Ethics 31.

Therefore, partners may not properly hold both the offices of town justice and assistant public defender.

Same Caption AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss.:

PETER BRANTI, being duly sworn, deposes and says:

That I am the Public Defender of Rockland County, appointed to that office on January 3, 1978.

That at the time of my appointment, my designated assistants were sworn by the County Clerk of Rockland County as Assistant Public Defenders.

That subsequent to November 8, 1977, I was approached by the Democratic majority of the 1978 Legislature and was told that I would be appointed as Public Defender. Thereafter, I spoke with the various Democratic and Republican political leaders of Rockland County and was given names of lawyers within Rockland County who made known their availability to the position of Assistant Public Defender.

That at no time was any pressure from any political leader brought upon me not to re-appoint any particular person in the office of the former Public Defender.

That as an Assistant District Attorney

with extensive trial experience for the past four years, I have had the opportunity to be on opposite sides with various members of the former Public Defender's Office and made judgments as to their competency and ability, and it was my feeling that the reappointment of plaintiffs was not necessary to the proper functioning of my office and would not meet the highest standards that I have set for attorneys in my office.

That I had requested that certain former Assistant Public Defenders be retained and I have so appointed William Nelson, Manuel Sanchez and John F. McAlevey to continue as Assistant Public Defenders.

That at no time did I coerce any member of the prior or present Public Defender's Office to support the Democratic Party of Rockland County or to request that they swear allegiance to the Democratic Party of Rockland County and in no way did I make their jobs conditioned on their political beliefs.

That attached hereto is a list of the former Assistant Public Defenders appointed by my predecessor. Next to their names are their political affiliation.

Next to their political affiliation is whether they were reappointed or resigned. As is shown in that list, a number of Democrats were not reappointed and Mr. Sanchez, who is not affiliated politically, was reappointed. Some of the former Assistant Public Defenders who are Republicans had either resigned or retired.

That plaintiff, FINKEL, is listed as a registered Democrat and in no way therefore, can his non-reappointment be considered on the basis of political reasons.

That plaintiff, TABAKMAN, is a registered Republican. However, as of the date of these papers, his continued membership in the firm of FREEDMAN, WRAY, WAGNER & TABAKMAN would constitute a conflict of interest since his law partner, William Wray, took office on January 3, 1978, as Clarkstown Town Justice. This would create an appearance of impropriety in the Public Defender's Office and does not measure up to the high standards which I intend to maintain in my office.

That at no time since November 8, 1977, did Mr. Tabakman take any action that would

prevent a conflict of interest from arising, to my knowledge.

That this conflict of interest was considered by me in deciding whether to reappoint Mr. Tabakman and is proper cause for Mr. Tabakman's non-reappointment.

WHEREFORE, deponent prays that the temporary restraining order be lifted; that a preliminary injunction be denied inasmuch as defendants have adequately shown that the plaintiff's non reappointment resulted from other than political reasons.

S/
PETER BRANTI

Sworn to before me
this 6 day of
January, 1978.

S/

PUBLIC DEFENDER'S OFFICE
FORMER STAFF

Fitzgerald, James A	N.R.	D.
McAlevey, John F.	R.	D.
Nelson, William K.	R.	D.
Sanchez, Manuel	R.	N.Reg.
Selman, Barnet S.	Ret.	R.
Leudan, Stuart M.	Res.	D.
Wray, William F. Jr.	Res.	R.
Finkel, Aaron	N.R.	D.
Tabakman, Alan	N.R.	R.

N.R. denotes Not reappointed
R. denotes Reappointed
Ret. denotes Retired
Res. denotes Resigned
D. denotes Democrat
R. denotes Republican
N.Reg. denotes Not registered

Same Caption AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss.:

JAMES K. ANDERSON, being duly sworn, deposes and says:

I am the Personnel Officer of the County of Rockland and make this affidavit in opposition to plaintiff's application for a preliminary injunction.

That I have reviewed the Personnel records of ALAN TABAKMAN and AARON FINKEL and have attached copies of their Personnel record. ALAN TABAKMAN'S and AARON FINKEL'S positions were in an exempt class. Appointees to such positions are not reviewed for qualifications. The appointing officer has sole discretion in the appointment and removal of individuals in this class of position under the Civil Service Law of the State of New York. In this case, the appointing officer is the Public Defender. Historically, an Assistant Public Defender serves at the pleasure of the Public Defender and no permanent status had ever attached to either of these plaintiffs. Although an appointment may be processed for technical reasons as permanent, this classi-

fication does not restrict the appointing officer in any way.

S/
JAMES K. ANDERSON

Sworn to before me
this 6th day of
January, 1978.

S/

Same Caption AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss.:

ARTHUR ACKERSON and ALEXANDRIA LEFEVER, being duly sworn, depose and say:

That we are the Elections Commissioners of Rockland County. That upon the request of the County Attorney, we have reviewed the most up-to-date voter registration lists available in our office.

That attached hereto is a list of the voter registrations of the former Assistant Public Defenders and the newly appointed Assistant Public Defenders as well as copies of the applicable voter registration lists.

S/
ARTHUR ACKERSON

S/
ALEXANDRIA LEFEVER

Sworn to before me this
6th day of January, 1978.

S/

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

The following is a reprinting of the relevant portions of the trial transcript of the United States District Court, Southern District of New York. Please note that pages 46 through 179 of this appendix contain the relevant portions of the transcript of the hearing on the preliminary injunction. Pages 180 through 390 of the appendix contain the relevant portions of the transcript of the plenary trial, which was combined with the hearing on the preliminary injunction.

An asterisk (*) indicates omission of testimony which extends onto a page not reprinted in the appendix.

as follows: [3]

DIRECT EXAMINATION

BY MR. FINKEL:

MR. FINKEL: Your Honor, at this time, if I may, I would like to make an application to exclude some witnesses.

THE COURT: Very well.

MR. SCHOENBERGER: Mr. Branti, who will testify, is also a defendant in this matter.

THE COURT: He may stay.

BY MR. FINKEL:

Q Mr. Barone, until recently, have you held any public office?

A I was the public defender of Rockland County by appointment from January 1, 1972 through and including December 31, 1977.

Q By what party was the legislature controlled when you were appointed?

A The majority of the legislators at the time of my appointment were Republican.

Q What was the political persuasion of your predecessor, if you know?

A He was Arnold Becker, my predecessor, and he was a Democrat.

* [5]

Q That is correct.

A Can you be of some further assistance by refreshing my recollection?

Q Was William Nelson appointed by you?

A Yes. He was appointed by me. He is a Democrat.

Q James Fitzgerald?

A He was appointed by me and he is also a Democrat.

Alan Tabakman was appointed by me and he is a Republican.

Q I was a Republican at the time that you continued to be in office?

A As I recall, yes.

Q I had served to your knowledge under Mr. Becker who was a Democrat?

A Mr. Becker had appointed you originally, yes.

Q Was it your understanding that Mr. Tabakman and I were permanent or provisional or what kind of employees were we?

MR. SCHOENBERGER: Objection, your Honor.

THE COURT: Overruled. [6]

A My understanding, my own personal understanding, was that everyone was appointed by me permanently, but at my pleasure, could be removed.

Q For no reason at all or for cause; would you need cause?

A I would not need cause.

Q You thought that you would not need cause?

A I felt that I would not need cause.

Q But the appointments were permanent?

A The appointments were permanent.

Q Did there come a time when you discussed the appointments to be made under the public defender who was to succeed you, with your succeeding public defender, that is Mr. Branti?

A Yes, Mr. Branti and I had perhaps two conversations that I might recall about the appointment of the new assistant public defenders.

Q Did you discuss with Mr. Branti how the public defender, assistant public defenders were to be chosen and on what basis they were to be chose, and who was to be appointed?

A It was my understanding that the majority of the new legislators, eleven, were going to hold a series of caucuses and prepare a list of attorneys submitted by them [7]

from which would be chosen the assistant public defenders and the assistant county attorneys.

I suggested to Mr. Branti certain assistants and he suggested that it would have to come from the legislators.

Q Was there any discussion as to how many and who would be the public defenders from each of the townships and how they would be chosen in each of the townships?

A No, we had no such discussion. If he knew he didn't tell me, I will put it that way?

Q Were you satisfied with my employment during my employment with you over the six years that you served?

A Yes, completely so. I think I wrote you a letter to that effect.

Q That is correct.

Did you find me to be competent?

A Yes. I would reemploy you again.

You will recall, Mr. Finkel, that you were the first public defender in the County of Rockland to win a drug case. I won't forget it.

Q How would you characterize Mr. Tabakman's performance over the period of time that he served with you? [8]

A I think Mr. Tabakman is an extremely competent attorney and I can't say more than that. I have been happy with him.

Q Would you have continued my employment had you remained as public defender?

A Yes.

MR. SCHOENBERGER: Objection.

THE COURT: Overruled.

A Yes, I would have.

Q Would you have continued Mr. Tabakman's employment if you--

MR. SCHOENBERGER: Same objection, your Honor.

THE COURT: Overruled.

A Yes, I would have.

Q In the regular course of business did you keep a personnel file for your own records, copies of which went into a permanent personnel file?

A Yes.

Q I show you certain documents -- I will show you first a report of personnel change dated March 26, 1971, signed by or apparently the original of which was signed by Mr. Becker.

*

* [22]

MR. FINKEL: Your Honor, I would appreciate it if the Court would make a note to the extent that Mr. Tabakman's oath is a part of the answering papers.

THE COURT: You are referring to this oath that is dated September 5, 1975?

MR. FINKEL: Yes, your Honor.

MR. SCHOENBERGER: There is no oath on there for Mr. Tabakman. It appears to have Mr. Barone's name on there.

THE WITNESS: No.

THE COURT: I have a note here signed by Mr. Tabakman, to be sworn to before Mr. Barone.

MR. SCHOENBERGER: I am sorry, your Honor.

THE WITNESS: That's right.

BY MR. FINKEL:

Q Mr. Barone, I show you another doucment annexed to the answering papers of the defendants.

It is marked "Report of Personnel Change" dated September 5, 1975, and having to do with the appointment of Alan Tabakman.

A Yes.

Q When you filed that report of personnel change--did you file that report of personnel change? [23]

A Yes, my office did.

Q When you filed it, did you likewise, or were you likewise unaware of the fact that it called for a temporary or a period type of appointment?

A This document that you are showing me, which is a photostatic copy of an appointment of Mr. Tabakman, indicates a term of office until 12/31/77.

As I have told you before, and as I will tell you now under oath, it was never my intention to limit that. I left this to Ms. DiCarlo to prepare. As a matter of fact, the X mark where it says "Temporary" and the X mark where it says "Exempt" are not done by my office at all since they are apparently done in ink.

I never paid that much attention to it. I left it to Ms. DiCarlo to prepare this in total and merely signed it.

I developed a policy in later years, as pointed out by one of your exhibits, of signing the duplicate copy and keeping it in the personnel file rather than having it a conformed copy.

Q Thank you.

THE COURT: How about the words "Part Time"?

THE WITNESS: That is-- nothing is done. Nothing is marked there except that all assistant public defenders, your Honor, [24] are part time.

THE COURT: All right.

THE WITNESS: They were at this time anyway.

THE COURT: It means that he can practice law?

THE WITNESS: Yes. Actually part-time as used in the County of Rockland must be differentiated from exclusivity. That means they can't practice law. Many of them put in 30 or 40 hours a week on a part-time basis.

Q Mr. Barone, would you have continued the employment of Mr. Tabakman irrespective of whether or not his partner may have become a judge if it were legally permissible or if some kind of conflict could be removed?

MR. SCHOENBERGER: Objection, your Honor.

I object to the form of the question.

THE COURT: I think I will sustain that objection.

Q Would you have continued Mr. Tabakman in office had you continued in office.

A Yes.

MR. SCHOENBERGER: Objection again, your Honor.

THE COURT: I will overrule the objection.

Q Did you consider him to be a permanent?

A Yes.

Q Mr. Barone, who was the administra- [26]
tor or administrators, who were the administrators of your office.

A Just myself.

Q Did you always call yourself the Dictator?

A I frequently told you, Mr. Finkel, and everyone who worked for me that you live in a democracy but you work in a dictatorship.

Q Did you review every piece of paper that left that office prepared by either myself or Mr. Tabakman?

A No assistant ever prepared a letter in my office that was not first reviewed by me before it went out.

Q Did I enjoy any confidential relationship other than as, as attorney-client, was there any peculiar confidential relationship that I enjoyed or Mr. Tabakman enjoyed in that office?

A With myself?

Q With yourself or in the office as a whole?

A No. You had nothing to do with the administration. And the only confidentiality that you and I enjoyed mutually was the confidentiality of the client-attorney relationship.

Q Did Mr. Tabakman or I have the auhtority to determine which clients were eligible for representation by the office? [27]

A No. The guidelines for representation by the public defender in Rockland County are set by the legislature, the are, however, only guidelines. The public defender has the final right of determination as to who shall be represented, absent an order from a judge, and each time a judge requested that we defend someone who was indigent, I would ask the judge to put on the record that he examined into the indigence.

Q As an assistant public defender I was not a policy-making employee?

A No. You were given a file.

Q Was I a confidential employee?

A No.

Q As a senior assistant public defender was I a confidential employee or a policy-making employee?

A You were not.

Q Did I administer the affairs of the office in any way?

A No. You were a supervisor of the justice courts.

Q Thank you.

Was Alan, Mr. Tabakman --

A I beg your pardon?

Q Did Mr. Tabakman have any peculiar policy-making functions? [28]

A No.

Q Was he an administrator?

A No.

MR. FINKEL: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. SCHOENBERGER:

Q What are the duties of your assistant public defenders?

A The assistant public defender is assigned duties in connection with the defense of indigent persons accused of crime, in justice courts, county courts, or wherever in the County of Rockland.

There are 23 justice courts and at the present time 3 county courts.

Q Can you tell me in detail what the responsibilities are?

A Well, I think that you could best get that from a job description which is on file with personnel, but a description of their duties are --

Q I asked you their responsibilities.

A Their responsibilities, all right.

They have the responsibility to make appearances in court and to competently defend the clients assigned to them. [29]

Q When one of your assistant public defenders appeared in court and a matter required some determination on his part, a legal determination or a strategical determination, how to handle a case, did he have full authority and power to make that?

A Only if the decision had to be made at the moment in the courtroom.

Q But were he in a courtroom and were a situation to arise, perhaps the plea of a defendant, he had the authority to use his judgment and determination as to what the plea should be if he could get one that would be acceptable?

A If the circumstances dictated that the plea had to be taken at that moment; but if it didn't, he had to come back to the office.

I will give you an example, if you will, and perhaps save you a lot of questions.

If a case came on and the question was, shall we make a motion or not; in other words, to put the defendant on the stand, it would be my decision after discussion with the assistant about the pertinent facts and details concerning the defendant, his rap sheet, if you will, and what have you. [30]

That decision had to be made in the office.

If he had to take a plea in court, as of that moment, it was usually done on the spot, if the circumstances dictated, but only in the justice courts, not in the county courts, not on felony matters.

Q Did Mr. Tabakman or Mr. Finkel represent the public defender's office in the county courts as well as the justice courts?

A Yes. Mr. Tabakman far less than Mr. Finkel, but Mr. Finkel has many times represented the public defender's office in the county court. They both represented our clients for the most part in the justice courts on misdemeanors and traffic offenses.

Q If they were before a judge in the county court and they had Mr. Finkel, for instance, he would have full latitude and discretion on how to handle that case and what to do with it?

A To a limited extent, as any lawyer would. My policy was never to destroy the professional attitude that I believe a lawyer should maintain in defending a client. I would not wish to in any way psychologically demean him so that he had to call me for every minor decision that had to be made. But he didn't have the latitude that you suggest. [31]

Most of my assistants knew just how far they could go.

Q But they all had a limit to which they could go?

A Yes. As any lawyer should.

Q They all had some determination as to how to handle a case?

A Yes.

Q And the policies to set on each case?

A You would have to tell me what you mean by policies.

Q I will certainly not debate with you.

A I don't know what you mean by policy. If you will tell me what you mean by it, I will be happy to answer it.

Do you mean what plea to accept?

Q With an individual case.

A Yes.

THE COURT: I think what I had better suggest to you is that I don't see policy and confidentiality the way you apparently see it, Mr. Schoenberger.

I think this has to do with a person's function in government, and not with their relationships to a client, not with their performance of assigned tasks such [32] as defending a client and making policies on an individual case or accepting confidencies

from a client; I do not regard that as the confidentiality and the policy-making that is spoken of in the cases.

Q In the years that Mr. Finkel and/or Mr. Tabakman were with you, did there come a time when they had your confidence?

MR. WAGNER: Objection, your Honor.

I don't think that "confidence" is used as it is meant in the statute.

THE COURT: Just a second. Mr. Finkel is the attorney on this.

MR. WAGNER: I am sorry.

MR. FINKEL: Your Honor, I don't intend to object to this line of questioning, in the interest of expediency, and I would like to get this hearing concluded.

I am going to give Mr. Barone the fullest latitude in answering the questions.

A Mr. Schoenberger, would you please explain to me what you mean by "confidentiality"? I will be happy to answer the question.

Q You are a lawyer, Mr. Barone. You are familiar with the word "confidentiality." You know what the word "confidentiality" [33] means.

Did Mr. Tabakman or Mr. Finkel, during the course of their employment by you, have your confidence and confidentiality?

A In making policy? In what way? In discussing whether we should ask for another girl from the legislature or whether the work in the office was getting too great or voluminous?

Q If there was a confidential matter concerning a case.

A Concerning a case?

Q And you wished to discuss it with them, did you feel that you could confidentially discuss it with them?

A The case they were handling?

Q Any cases in the office.

A Any cases in the office I could discuss with them, absolutely.

Q You felt that there was a confidential relationship between you and them as your employees?

A In connection with clients, absolutely. I said that before to Mr. Finkel.

[36]

Q Did you discuss with him the possibility of keeping you on in the office of public defender?

A I certainly did.

Q Do you recall what he said to you at that time concerning that?

A Yes. He was aware, as I was, that at about a year and a half ago I had an opening for an assistant public defender and the only applicants I had were Democrats. I called Mrs. Cornell, the chairman of the Democratic Party in RocklandCounty, and I suggested to her that I would be most appreciative if she could recommend several names to me, and if acceptable, I would be happy to appoint one. And that I would then expect some consideration so that at the end of my term of office in December of 1977, I would receive an appointment somewhere in the county hopefully as an assistant public defender so as to achieve a retirement for which I have approximately four to five months left.

When Mr. Branti came to my office, I asked him if it was his intention to re-appoint me as an assistant and I offered at that time to do all of his appeal work which I had been doing for six years. [37]

Q Once again, do you recall what his response to you was at that time?

A Yes. He said he couldn't do it.

Q Mr. Barone, are you resentful at all to Mr. Branti for having not appointed you?

A No. Mr. Branti and I have been friends for a number of years and I am not resentful of Mr. Branti at all. As a matter of fact, as Mr. Branti will tell you, I hope, we have been most cooperative since he took office before and during the strike that's going on right at the present moment.

Q Mr. Barone, how many of the public defenders or assistant public defenders or other attorneys in your office were either partners or associated with the firm of Freedman, Wray, Wagner & Tabakman?

MR. FINKEL: Objection, your Honor.

THE COURT: What is the basis of the objection?

MR. FINKEL: It is immaterial and it has no probative value, your Honor.

MR. SCHOENBERGER: Your Honor, it is very material.

THE COURT: I don't know whether it is or not. But I will listen to it. I will overrule the objection. [38]

A Fine.

In answer to your question, in my office, not appointed at the same time, but in my office at, on the date that I terminated December 31, 1977, I had Mr. Tabakman and Mr. Wray, who are partners, and Mr. Sanchez, who was associated with the firm. He is not a partner, to the best of my knowledge.

Q To the best of your knowledge, on this day, are Mr. Tabakman or Mr. Wray still partners?

A To the best of my knowledge today they are still partners.

Q Do you have any idea, approximately, an approximate idea, if possible, how much the partners or the associates of the firm of Freedman, Wray, Wagner & Tabakman receive in salaries from the county, while under your employ in the public defender's

office?

MR. FINKEL: Objection, your Honor.

THE COURT: That is a matter of arithmetic, either addition or multiplication. I don't see the relevancy of this.

If there are three of them who are partners, then it is a matter of adding up their three salaries.

MR. SCHOENBERGER: I was wondering if he could give us an approximate figure. [39]

I will tell you what I am leading to, your Honor. I think there is a much closer association here besides public defender and assistants.

I think that goes to the direct credibility of Mr. Barone's testimony.

THE COURT: I will overrule it.

A What you would have to tell me was the date of appointment of each.

Q I am asking you if you know.

A No. It is $13,000.

Q Would you be surprised to learn that between Mr. Wray, Mr. Tabakman, Mr. Finkel, and Mr. --

MR. FINKEL: Ojbection, your Honor. I am not a partner of that firm.

MR. SCHOENBERGER: Excuse me.

Between Mr. Wray, Mr. Tabakman and Mr. Schanez, that during your tenure of public defender, those gentlemen received over $100,000 from the County of Rockland?

A I would say that is approximately correct.

Q Mr. Barone, did you have any expectation of becoming a member of that firm after you left the public defender's office?

A No.

Q Never at any time, sir? [40]

A No. I had an expectation of getting space there if it were available. It has been made available and I have not accepted it. There was never any question of becoming a member of that firm.

Q Barry Weiss, is he a member of the public defender's office?

A No. Barry Weiss was a law student under appellate division order in his last year and after that and subsequent to that he was a volunteer in the office.

Q Where does he work?

A He works for Freedman, Wray, Tabakman & Wagner; recently, that is, in

the last few months.

Q Did he at any time cover calendar for Freedman, Wray, Tabakman & Wagner?

A Yes. And others.

Q As public defenders?

A And others, yes.

Q Did he cover calendars for your office also?

A Yes. I am authorized by law to employ outside counsel.

Q Did he ever take an oath of office?

A He doesn't have to. He doesn't get paid.

Q Your answer is no?

A No. He didn't take an oath of office. [41]

Q Did you ever as a highly professional public defender and attorney feel that this association may border on impropriety or even be in the realm of impropriety?

MR. FINKEL Objection, your Honor.

THE COURT: What relationship?

MR. SCHOENBERGER: The relationship between the public defender's office and Freeman, Wagner, Tabakman & Wray.

A I don't understand the question.

THE COURT: Just a second. there is a pending objection. I will overrule the objection. Do you think that it was improper?

THE WITNESS: No, I didn't.

Q Would you think it was improper if Mr. Tabakman remained in the office of public defender when his partner Mr. Wray became a Clarkstown Justice?

Q As I said before, and the point was not pressed, I would have reappointed Mr. Tabakman even though his partner Mr. Wray was appointed town justice because it is my recollection there there is an opinion of the Attorney General, and also an opinion of Audit and Control which I read, which indicates that a town justice who is part time may not practice in any other justice court, but that any person who is partner or associate in the firm may practice criminal law in any other justice court excepting his. [42]

That is my recollection and that would have been the basis of the reappointment.

I don't have the numbers of the --

Q You don't feel, sir, do you, that a municipal employee, an assistant public defender, might be acting improperly if he were to appear in the justice court where his own partner was sitting as a judge?

A He could not appear there. I just pointed it out. The opinion of the Attorney General points out that he could not appear in the justice court in which his partner was sitting, whether his partner was sitting as the judge or whether there was another judge there. He could not appear in that court.

Q I show you a copy of the Opinion Committee on Professional Ethics for the New York State Bar Association, dated February 25, 1972.

Have you ever seen this opinion before?

A No, the opinions I saw were --

Q Would you read the opinion?

A -- of the Attorney General and the Department of Audit and Control, if I remember correctly.

This opinion, do you wish me to read it?

Q Yes.

A The opinion --

MR. FINKEL: Objection.

Your Honor, I think the opinion is part of the papers submitted to the Court. In order that we complete this hearing, perhaps if it can be done today, I don't think it is necessary.

MR. SCHOENBERGER: Your Honor, I would like Mr. Barone to read the opinion.

THE COURT: He can read it to himself.

A This opinion has absolutely no bearing on what we were talking about.

Now, if you would like, I will read it.

Q Have you read it, sir?

A Yes, I have.

It has no bearing on what we are talking about.

Q Even with the knowledge of this opinion you would then still appoint Mr. Tabakman were you able to as an assistant public defender?

A Absolutely.

Q Thank you very much.

MR. SCHOENBERGER: No further questions, your Honor. [44]

MR. FINKEL: I have a few

THE COURT: What do you mean that this opinion has no bearing?

THE WITNESS: May I just have that opinion again?

I have never seen it before. I read it rather quickly. I will point out to the Court why it has no bearing.

The question is, may partners hold respectively the offices of town justice and assistant public defender?

Opinion: It would be incongruous to expect a town justice to also be an assistant public defender.

I absolutely agree with that and would not have appointed Mr. Wray.

The position of public defender carries with it the duty to represent indigent defendants in criminal cases and may result in the representation of defendants in the court of the town justice or a court of higher jurisdiction. Such a criminal practice is prohibited to a town justice. The relations

of partners in a law firm are such that neither the firm nor any member or associate thereof may accept any professional employment which any member of the firm cannot properly accept. [45]

Now, I don't think that applies. I think that the application is to the town justice alone.

He can't --

BY MR. SCHOENBERGER:

Q Did you read the digest in the upper right-hand corner?

Would you read it out loud?

A "Town justice partnership. The limitation upon the practice of a town justice prevents his partner from being an assistant public defender."

This is on the stationery of the New York State Bar Association, the Committee on Professional Ethics.

May I ask you what standing that has?

Q I am not on the witness stand, sir.

THE COURT: When you say it has no bearing, do you mean that you disagree with it?

THE WITNESS: Yes, sir. It has

no bearing based on the opinions I have seen from the Attorney General which I think takes precedence over the New York State Bar Association opinion.

I hasten to add that those opinions may have been superseded, but I am not aware of them. I do get most of the literature. [46]

BY MR. SCHOENBERGER:

Q Mr. Barone, this opinion was rendered on February 25, 1972.

You were a public defender at that time, weren't you?

A I am talking about the opinions of the Attorney General, Mr. Schoenberger.

Q You don't follow the Opinions on Ethics, is that the idea?

MR. FINKEL: Objection, your Honor.

THE COURT: Objection sustained.

MR. SCHOENBERGER: No further questions.

MR. FINKEL: I have a few questions.

REDIRECT EXAMINATION

BY MR. FINKEL:

Q When you appointed Manny Sanchez as an assistant public defender, was he a member of the firm ofFreedman, Wray, Wagner & Tabakman?

A He was not.

Q Do you know of any financial or economic relationship between them or even if they knew each other at the time you took Manny Sanchez into your office?

*

[52]

*

Q You were appointed by the then public defender Arnold Becker?

A Yes.

Q What was his political party?

A Arnold Becker, to the best of my knowledge, was a Democrat, appointed by a Democratic-controlled legislature, or Board of Supervisors.

Q What was your enrollment at the time of your appointment?

A I was put on as a permanent employee.

Q What was your political enrollment at that time?

A I was a Republican. I had been a Republican for at least ten years at that time.

Q At the time of your initial appointment, did you have any understanding as to whether this was a temporary or a permanent appointment?

A There was no question in my mind that I was a permanent appointment. I wouldn't have taken the job for the tenure

of Mr. Becker, which was just a few months.

Q You were appointed in 1971. Mr. Becker's appointment ran out when? [53]

A December 31, 1971.

Q Right.

Now, Mr. Finkel, subsequent thereto Mr. Barone, who just testified, became the public defender, is that correct?

A Yes.

Q Did you approach Mr. Barone about being retained in your position?

A No. He just continued me in office.

Q Was there any discussion between you and Mr. Barone as to whether you would stay or whether you would go?

A He asked me, I believe -- it is a long time ago -- I believe he asked me if I would supervise some of the other assistant public defenders. I did. I stayed on.

Q At that time was it your belief that your continuation by Mr. Barone was on a permanent basis?

A It certainly was.

Q Did there come a time some time in the latter part of the year 1977 when you became aware as to the possibility that an attmept would be made to terminate you from your job?

A Towards the end of the year 1977, yes. I read it in a newspaper. [54]

Q Prior to reading it in the newspaper, was there anything which led you to believe that Mr. Barone was going to be replaced by another public defender?

A Yes. There was much talk about that. The new legislature was going to appoint a Democrat and then there was discussion as to who itwould be. It was pretty much understood that Mr. Barone would not be reappointed by the Democratic legislature.

Q Mr. Barone was a Republican appointed by a Republican-controlled legislature in 1972, it that correct?

A Yes.

Q There was an election held in Rockland County as it is held every four years for the County legislature, is that

correct?

A Yes.

Q Which party won the election?

A In the most recent election, the Democrats controlled the legislature.

Q As the result of your feeling that a new public defender would be appointed, did you have occasion to have any conversation with the defendant herein, Peter Branti, concerning whether he would become the public defender and if so [55] whether he would retain you in that position?

A Yes, I did.

Q Could you tell us approximately when you had that discussion and the gist thereof?

A In fact I had two discussions. I had one, I think it was in November in the office of the District Attorney. I approached Mr. Branti and I indicated in some way that I would like to remain on with the public

defender's office.

He didn't commit himself, he didn't say anything at that time. At that time I don't think he knew that he had, he was going to get the appointment. I was between him and Jack McAlevey.

He didn't commit himself because I don't think he knew.

Q Did you have a subsequent conversation with Mr. Branti concerning your being retained in that position?

A Yes. I met Pete Branti at the back of the courthouse, by chance, and I asked him, I told him that I had two kids in college and I needed the job, and I would like to remain on because I understood that there was talk that the legislators were going to make the appointments. [56]

Nobody had approached me or said anything to me.

Pete said it is not up to him so --

Q This conversation, did the conversation, to the best of your knowledge, take place prior to December 24, 1977, when there was an article in the newspaper?

A Yes.

Q Subsequent to your conversation with Mr. Branti wherein you indicated your intention to remain with the public defender's, if possible, did there appear an article which you read in the local newspaper, the Rockland County Journal-News?

A Yes. I am looking at a copy of that article now.

Q Is the Rockland County Journal-News a daily publication published in and around the County of Rockland?

A Yes.

Q Did you yourself obtain a photostat copy of the article from that newspaper?

A Yes, I have the original in my papers if you would like that.

MR. WAGNER: I would like to offer that in evidence, your Honor.

MR. SCHOENBERGER: I have no objection to it being admitted into evidence, [57] your Honor, only as a copy of a newspaper article, but not as to any truth pertaining to the article.

THE COURT: All right. It will be received.

(Plaintiff's Exhibit 7 received in evidence)

Q Mr. Finkel, subsequent to reading that article --

A Shall I find it for you?

Q That's all right.

Mr. Finkel, could you tell us essentially what the gist of that, the purport of that article is?

MR. SCHOENBERGER: Objection, your Honor. There is no indication that the article reports the truth or any semblance of the truth. I have no objection to the fact that it appeared in the newspaper. I will accept that as being true.

MR. WAGNER: I offered it to lay a ground for the plaintiff's subsequent actions which he took based upon what he read in the public press.

THE COURT: I just read the article. I take it that you read the article?

THE WITNESS: Yes.

THE COURT: We will go on.

Q Subsequent to that appearance of the article, did you in concert with Mr. Tabakman, the coplaintiff herein, prepare and serve upon the defendant Peter Branti a certain letter? [58]

A Yes.

Q Was that letter in fact served on Mr. Branti on December 30, 1977?

A Yes, it was.

Q I believe counsel for the defendants has a copy of this letter.

MR. WAGNER: It acknowledges receipt by the County Attorney and Mr. Branti. I would offer that in evidence.

MR. SCHOENBERGER: I will object to the admission of that letter in evidence, your Honor because (1) it is completely self-serving; (2) one needs only to look at the letter to determine that it was prepared for the purposes of this litigation.

MR. WAGNER: I will so concede.

I offer it, your Honor, solely for the purpose of showing that defendant Branti was put on notice of the fact that Mr. Finkel and Mr. Tabakman intend to continue their employment with the public defender's

office and were ready, willing and able to do so.

THE COURT: it will be received. [59]

MR. WAGNER: I offer it as Plaintiff's Exhibit 8, your Honor.

(Plaintiff's Exhibit 8 received in evidence)

Q Mr. Finkel, can you tell us --

MR. SCHOENBERGER: If your Honor please, I will object for the record. I think that if Mr. Finkel is going to write notes to Mr. Tabakman during the course -- I am sorry, Mr. Finkel is going to write notes to Mr. Wagner during the course of the trial, in order to aid him, presumably to help him testify, to ask him questions, I will object to that very seriously.

MR. WAGNER: I have no objection to the objection, your Honor.

THE WITNESS: I made a note for myself. Mr. Wagner thought perhaps that I was making a note for him. I was only making a notice for myself.

MR. WAGNER: Also, I couldn't even read his note.

THE COURT: Let's go on.

Q Mr. Finkel, in your duties as an assistant public defender, and I am talking about your duties as of the end of December, 1977, what did those duties consist of?

A I went to-- I handled all justice courts matters as directed by the public [60] defender.

Q When you say "handled," what exactly was it, your position vis-a-vis the defendants who appeared in these courts; what did you do?

A I would come into the office each Monday morning or Monday afternoon, obtain my files, review my files either at the office or elsewhere, appear Monday nights in the Town of Stony Point to represent those defendants whose files I had -- they were declared eligible by Mr. Barone prior to that time.

Q Did you have anything to do with declaring someone eligible by you as an assistant public defender?

A No. As a matter of fact if I went to court and a prospective client needed assistance, I always, at the direction of Mr. Barone, asked the Court to please grant

an adjournment to either the next Monday night or to two weeks hence so the defendant could appear at my office and be interviewed by an investigator or an attorney and be declared eligible by Mr. Barone for representation.

Q Did you have any say or voice or any relationship whatsoever with the running of the public defender's office.

A. Not in any way whatsoever. As a matter of fact, Mr. Barone was always adamant that any piece of paper that went [61] out of that office be reviewed by him for its legal sufficiency and technical sufficiency.

Q Did Mr. Barone, did you and Mr. Barone have any position of confidentiality, one with the other, wherein he would take you into his confidence concerning any matters other than cases in which you were appearing?

A Perhaps in an unusual circumstance we shared a confidence. He would say, "Look, don't tell anybody." The same thing that, among any employer and employee.

Q Did you share the same confidences with your coemployees?

A Yes.

Q And with other members of the bar who were not related to you in any way, friends of yours?

A On occasion if it didn't violate a defendant's relationship with me.

Q Mr. Finkel, in the course of your employment as deputy public defender, or assistant public defender under both Arnold Becker and Frank Barone, were you ever reprimanded by either one?

A No, never. Mr. Barone sounds off once in a while.

Q A formal reprimand?

A No. In no way. As a matter of fact, I asked Mr. Barone if he had anything [62] that might be helpful to me in this action. He said, "Well, I have some letters from various churches and things which I have received commending you for certain work that you have done." I didn't bring it out in his testimony, but I am sure if he is recalled --

Q To your knowledge, there has never been any question raised by anyone in the two terms, the two public defenders under

which you served concerning your competence or ability?

A No. In fact, Mr. Becker made a party after I won a very substantial case. Mr. Barone has commended me often.

Q Mr. Finkel, what political party are you registered in as of today?

A I really don't know. Back in February or so I had a conversation--I have been a Republican for the past seventeen years. In February or so of this year I had a conversation with the District Attorney who, of Rockland County, who indicated to me that--he offered me a job in his office. I told him that I wanted to stay on with the public defender's office. He told me that it would be a good idea if I changed my enrollment.

I went to the office of the Commissioner of Elections and I changed my [63] enrollment.

Q When was that change effective?

A It was effective after the 1st of this year. I didn't want to seem as though I was doing it for political reasons.

Q In other words, as of at least the

end of December, 1977, you were still a Republican, registered as such?

A Yes.

Q Mr. Finkel, do you have any opinion as to the reason why you were not reappointed?

A There is absolutely no question in my mind that I was not reappointed because I was a Republican.

MR. SCHOENBERGER: Objection. That is a proper determination for the Court.

THE COURT: Overruled.

MR. WAGNER: I have no further questions, your Honor.

THE WITNESS: Your Honor, may I just say one thing? I am not certain that it was, that the District Attorney, when he spoke to me, used the exact words I used. But he did say that it would be a good idea to change my enrollment or something of that nature, and I did do it.

CROSS-EXAMINATION [64]

BY MR. SCHOENBERGER:

Q Is it correct that in about February of 1977 you filed papers with the

Board of Elections to become a Democrat?

A Yes.

Q Copies of those forms are attached to the papers that we submitted here?

A What was that?

Q Have you seen copies of those forms attached to the papers submitted?

A I went over your papers in five minutes. If you have the form I signed, I will acknowledge that it is accurate. I did sign a form to become an enrolled Democrat.

Q Is this the form?

A That is a form bearing the date February 16, 1977, signed by me; the signature and the date are very obvious to me in my handwriting from the photocopy, that is. The other printed material, I don't think I wrote. I don't think I wrote anything else on that form but I did write the date and I did sign it, and I did make that application.

Q Did anyone ever force you to become a Democrat? [65]

A No.

Q You did so voluntarily?

A Yes.

Q Did anyone ever force you to give

money to the Democratic Party?

A No, but I have.

Q when were you first appointed as an assistant public defender?

A I was first appointed in March of 1971.

Q When you were appointed, was that March of 1971?

A I think it was the 26th of March or the 29th of March.

Q Approximately.

A This is my recollection from papers I have reviewed. It was not -- it was the first part of 1971, I will say.

Q Wasn't the existing legislature due to terminate in December 1972?

A That is right.

When you were appointed by Mr. Becker, in March 1971, are you aware if there were any promises or representations made or any political deals to carry you into the new legislature and into a new appointment, or a further appointment as a public defender? [66]

A No. I am not a very strong person politically. I was a committeeman at one time, but of minor stature.

Q The second time you spoke to Pete Branti, had he then been appointed as public defender?

A The second time, no.

Q You asked Mr. Branti if in the event he became public defender, if you could remain in the office, is that correct?

A My recollection is, it was a brief meeting, I recall; I recall almost precisely what I said. I said, "Pete, I have two kids in college. I need the job." And I don't know if I said I understand you are going to terminate me. But it was understood that I was not going to be there. Nobody spoke to me. Everybody avoided the situation. Everybody knew that we were all going.

So -- what was the question? I am getting emotional.

Q You knew "we were all going." Go ahead and finish.

A What was the question?

Q You classified yourself as being permanent?

A Yes.

Q You testified that you had a belief that you were permanent? [67]

A Yes.

Q You heard Mr. Barone testify--

A Yes.

Q --as to what permanent meant to him?

A Yes.

Q Did you have the same understanding as to what permanent meant to you also?

A Until recently, yes.

Q You knew you were serving at the pleasure of the public defender, didn't you, when you were first appointed?

A I felt if I did my job--

Q Would you answer my question, please? You were serving at the pleasure of the public defender when you were first appointed, weren't you?

A Yes, provided I did my job, provided I didn't mess up. I assumed that I was --

Q You knew when you took that job in March 1971, it was at his pleasure?

A You are putting words in my mouth and you know that. We can be adult about this. We are both attorneys.

MR. SCHOENBERGER: Your Honor -- [68]

THE COURT: The question is, did you know in 1971 when you took the appointment as an assistant public defender that you would hold that job at the pleasure of the public defender?

THE WITNESS: At that time I felt that I served at the pleasure of the public defender, yes.

THE COURT: Next question.

Q Do you recall previously testifying in court that you would not have taken the job in March, 1971, if you had not believed it to be permanent?

A Yes. I left a job to take that job.

Q At the pleasure of the public defender?

A Yes.

Q Were you aware when you took the job that the public defender, whoever that may be, could dismiss you without cause if he chose to do so?

A At that time I believed that to be true. But I generally do my work well and I never dreamed that I would ever be dismissed from a job.

Q Isn't it true that when someone comes to the public defender's office, and seeks assistance of the public defender to represent them in court, they are met by secretaries who discuss their situation with them; is that true or isn't it. [69]

A Sometimes. Sometimes the secretary will discuss a situation with a defendant. But if a legal question becomes involved, they have no authority.

Mr. Barone is, was very strong about that. It must go to an investigator or to a lawyer.

Q Isn't it true, the secretaries in your office are the ones who make the determination as to whether a person is eligible for assistance, generally speaking?

A Absolutely untrue. If a secretary ever did, and it became known, she would have some job explaining the situation.

Q Was there a confidential relationship between you and Mr. Barone, the public defender, concerning cases upon which you were appearing, representing the public defender's office?

A If an accounting to Mr. Barone

about my files that I must treat as confidential between the client and myself is a confidential relationship of the nature that you are talking about, the answer is yes. I discussed my files with Mr. Barone.

If I had a problem I would go to him with it. I didn't go to, I didn't hide problems from him. He was very helpful to me. Sometimes I felt not, but that's besides the point. [70]

Q When you were in justice court or county court, did you feel yourself to be an extension of Mr. Barone in that court?

A Very definitely. As all my papers were Frank Barone, Aaron Finkel, of counsel.

Q You were, if I may say so, his personal -- not his personnel -- his personal representative in court?

A Yes, I was.

Q You enjoyed along with that all the aspects of a personal relationship, including confidentiality; that's true, isn't it?

A I was an employee of an employer. My employer was the public defender.

Q Would you answer the question yes

or no?

A I owed him the confidential relationship of the principal agent, of the employer/employee. Yes, I did.

Q When Mr. Barone was not in the office, on vacation, out sick, who presided over the office and determined policy?

A I am glad you asked that question. Not me. At no time did Mr. Barone ever leave me in full charge of that office.

There was a period of time when he left Herman Vanellen in. There was a period when he left Mr. Nelson. [71]

There was a period of time when he might have left somebody else. I felt upset at times that he never did choose to leave me in charge of the office, never very upset, but you know --

Q Regardless of all the competence you had in the office, as you testified, competence you had in the pursuit of your duties as assistant public defender, you felt upset that he didn't leave you in charge?

A Yes.

Q Wasn't there a time when you were

a senior assistant public defender?

A Yes.

Q Who was the public defender at that time?

A I think I served as senior assistant only under Mr. Barone. I was up and down. However, it worked out best for Mr. Barone. I served as his assistant. I got bigger salaries, smaller salaries. I put in bigger time and smaller time as he directed.

Q Who is directly subordinate to the public defender in the public defender's office?

A There is an executive assistant, a chief assistant. There may be somebody else in between. The senior assistant -- scratch that.

Q Would you tell me the duties of a senior assistant? [72]

A My duties were pretty much the same as the assistant. I just handled a bigger load of cases. If there was, if the defender thought he had a particular problem in a particular court, he might call me up in the middle of the night or something like that and I had to straighten it out, based

on his directions.

Q Isn't it true that when you appeared in county court representing the public defender's office, you have responsibilities that were not well-defined and broad?

A No. I think they were well-defined. They may have been broad. Any attorney in any court has broad responsibilities, has a big job. He has to be on his toes at all times. But well-defined--

Q When you were in county court representing a defendant, did you formulate plans for the implementation of the goals which you were therefor, namely, to represent that defendant?

A I am sorry, I don't understand the question.

Q When you were in county court representing a defendant as an assistant public defender, did you formulate plans for the goals of the representation of that defendant? [73]

A Yes, I believe yes. I am still not absolutely sure about your question. I did try to do the best I could for the

defendant, yes; if that's what your question is.

Q You had wide latitude and discretion on how to proceed, didn't you?

A I didn't have that wide a latitude. I had to work within a certain framework. Mr. Barone called meetings from time to time and would say, for example, that if anybody dares take a plea for a guy who is on probation, you are in big trouble. I didn't have that kind of latitude where I could take a plea for somebody on probation.

Q In normal circumstances of representing the defendant as an assistant public defender or as a senior assistant public defender, and you had an opportunity to take a plea on occasion, in normal circumstances, did you call Mr. Barone and ask him if it was all right to take that plea or did you make your own decision?

[75]

*

A Not my reappointment. My being continued on the job.

Q Because you knew, didn't you, that if he were appointed public defender, you

would serve at his pleasure and he could discharge you without cause, is that correct?

A At that time that is not true at all, because back in July of 1977, I studied the constitutional law questions in this matter and I studied constitutional law very thoroughly. I was convinced that Mr. Branti or whoever the public defender was didn't have that power. But I did-- I was not privy to any of the machinations in the Democratic Party.

MR SCHOENBERGER: Your Honor, I move to strike that as totally not responsive.

THE COURT: Yes.

Q I show you a list of the former public defenders in office, the former staff, as part of our papers filed with the Court.

A Yes. [77]

*

Q Out of those names do you know who is still remaining on the public defender's staff today?

A I have no idea. I know what the

newspaper said, I know that from hearsay but I don't know who was actually appointed.

Q Thank you very much.

A I would comment on something --

Q Thank you very much.

MR. SCHOENBERGER: I have no further questions.

REDIRECT EXAMINATION

BY MR. WAGNER:

Q Isn't it correct and would it not be fair to say that as an assistant public defender your sole obligation was to represent individual indigent clients within the guidelines set down by Frank Barone in court on a case-to-case basis?

A Yes.

Q You had no role whatsoever in formulating overall policy?

A Absolutely none.

Q You might have formulated policy with regard to an individual case that you were appearing on within Mr. Barone's guidelines, is that correct? [78]

A That is correct. Mr. Barone was very, very adamant that nobody took over his administrative --

Q I think we discussed that.

Mr. Finkel, suppose you were offered what you thought was a good deal for your client and you advised, you counselled, you begged and cajoled him to accept the plea. If he insisted on pleading not guilty would you have to represent him and plead not guilty and proceed with this trial?

A I never controlled a client. I never pushed a client around to take a plea. If a client, well counselled, wanted to take a plea, sure I had that power.

Q Suppose that you felt that a particular defendant's going to trial was the dumbest thing that he possibly could do, but he insisted, do you have any authority to say to him that you won't represent him any more, or if you will do that I am leaving, or did you have to represent him as I directed?

A I did have with limited exception. There were, to be completely honest, there were times when I would tell, there were times when I would tell a client just to give him a cooling off period, or something like that, saying I won't represent you if

you do such and such, just to give, I would take some kind of action to give him time to [79] cool off if I had to. Generally, I did the client's will.

MR. WAGNER: Nothing further.

RECROSS EXAMINATION

BY MR. SCHOENBERGER:

Q When you spoke to a client and gave him that time to cool off, or counselled him as to whether to take a plea or not, you did all that based upon your own discretion without calling Mr. Barone up on the telephone asking if that was correct?

A I had to do things.

Q It is correct?

A Yes.

MR. SCHOENBERGER: Thank you.

(Witness excused.)

MR. WAGNER: At this time, your Honor, I would like to call plaintiff Alan Tabakman to the stand. [80]

A L A N T A B A K M A N, a plaintiff, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WAGNER:

Q Mr. Tabakman, did there come a time when you assumed the position of assistant public defender for County of Rockland?

A There did.

Q I show you here a document and I ask you if that is the oath of office or a copy of the oath of office which you swore to and filed with the County Clerk.

A It is a copy, and that is my signature.

MR. WAGNER: Any objection?

MR. SCHOENBERGER: No objection.

MR. WAGNER: I offer it in evidence as Plaintiffs' Exhibit 9.

THE COURT: Received.

(Plaintiffs' Exhibit 9 was received in evidence.)

Q Mr. Tabakman, you were appointed by Frank Barone, is that correct?

A Yes. [81]

Q At the time of your appointment, sir, did you believe your appointment to be temporary or permanent?

A I believe my appointment to be permanent.

Q You have heard Mr. Finkel describe the duties of an assistant Public defender. Without going into great detail, were your duties essentially similar to his?

A They were essentially the same duties. I would add that I was never a senior assistant public defender or an executive assistant public defender. Since the time of my appointment I was only an assistant public defender. The duties were essentially the same other than with the limitations that I have just mentioned.

Q To represent indigent clients to the best of their interest within the guidelines set forth by Mr. Barone?

A Yes.

Q You didn't ever exercise any policy making powers in that office?

A No.

Q Was your relationship with Mr. Barone as your employer a confidential

relationship other than the normal confidence that an employer expects of an employee?

A No. It was not. [82]

Q In the course of your employment as an assistant public defender were you ever reprimanded?

A I was never reprimanded, not by Mr. Barone.

Q Were you ever reprimanded by anyone over you, whether Mr. Barone or his executive assistant or anyone?

A No.

Q Were any compliants ever made to you about the quality of your work?

A To the best of my knowledge,no.

Q Did there come a time in some time late 1977 when you became aware that Mr. Barone's term which was expiring was expiring and that he would not be reappointed?

A Yes. I did become aware of that.

Q Did you subsequently become aware either through political rumor or newspapers or what not that Mr. Branti was being considered for the job of public defender?

A I did become aware of that also.

Q As the result of the fact that you

believed Mr. Branti to be the next public defender did there come a time when you had a conversation with Mr. Branti more specifically at the Christmas cocktail party of the District Attorney of Rockland County, [83] Mr. Kenneth Gribetz?

A Yes. I did have a conversation with him.

Q Mr. Tabakman, what was the gist of that conversation?

A I believe at that time that Mr. Branti was, so to speak, the shoo-in as far as the public defender's office was concerned or the appointment to it.

I had spoken to Pete, Pete had indicated to me that he liked me. He would have liked, he would like to keep me in the office. He told me that he didn't have the power to make the appointment. The power to make those appointments was with the Democratic caucus, specifically with the 11 Democratic legislators who had recently been elected in the early part of November.

Q Did he make any suggestions as to any procedure which you could follow to gain the approval of the Democratic caucus?

A Well, to gain the approval of the Democratic caucus was to find a Democrat, find a Democrat to sponsor you. Then you could stay in the office.

Q Did he at any time --

THE COURT: Did he say that?

THE WITNESS: I would have to find a Democrat to sponsor me. [84]

THE COURT: He said that?

THE WITNESS: To me.

Q His words were you have to find a Democrat to sponsor you?

A Yes. that is right.

Q Did Mr. Branti at any time during that conversation or at any time prior to today ever state to you that he could not retain you as an Assistant Public Defender because your partner had been elected a Town Justice?

A No. He never said that to me. I wish that he would have given me the opportunity. If he would have spoken to me about that, I wish he would have done that.

Q Mr. Tabakman, did you ever as a regular assignment appear as the assistant public defender in the Town of Clarkstown?

A No.* [88]

CROSS EXAMINATION

BY MR. SCHOENBERGER:

Q Mr. Tabakman, as an attorney do you consider yourself to be a person of high ethical standards?

A I try to be. Not only as an attorney, by the way.

Q I am glad to hear that. Have you ever seen this opinion before?

A Not until today.

Q Have you read it?

A Yes.

Q Anywhere in that opinion does it limit or make reference to the fact of a partner who was a public defender appearing in the same court as the other partner who is a Justice Court Judge?

A It apparently does.

Q Isn't it true that that opinion is a very broad opinion saying that an assistant public defender cannot appear in any court, cannot practice law as an assistant public defender if his partner is a Judge?

A I don't know if I would characterize it as a broad opinion. It is an opinion.

Q Is the characterization I just gave, isn't that correct? [89]

A What was that, what characterization? Broad?

Q The characterization that as an attorney who is a public defender.

A If your law partner is a justice that you cannot act as a public defender. That's apparently what the opinion says.

Q It doesn't limit it merely to the court in which the partner is the Judge, isn't that correct?

A That's apparently what it says.

Q You spoke to Mr. Branti at the Christmas cocktail party?

A Correct.

Q Were you alone?

A No.

Q Who was there?

A Mr. Wray, my partner.

Q Anyone else?

A There were a lot of people there. I don't believe that they heard what took place as far as the conversation was concerned.

Q But Mr. Wray, your partner, the now Judge Wray was there with you, wasn't he?

A Correct. The assistant public

defenders were invited to the party, he was an assistant public defender at that time and a judge elect. [9(

Q What is your registration?

A Republican.

Q Has anyone coerced you to change your registration to Democrat?

A To change my registration to Democrat?

Q Yes.

A I haven't changed my registration.

Q Has anyone attempted to coerce you to attempt to get you to change your registration?

A No.

Q Has anyone made your job conditioned upon contributions to the Democratic party?

A No.

THE COURT: You are talking about the job he used to have, I take It?

MR. SCHOENBERGER: Yes, sir.

Q Did anyone condition your reappointment upon your allegiance to the Democratic party?

A Not allegiance to the Democratic party.

MR. SCHOENBERGER: Thank you very much.

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* [92]

MR. WAGNER: No further questions.

MR. SCHOENBERGER: I have no further questions.

MR. WAGNER: The plaintiffs wish to call Judge William Wray, Jr.

W I L L I A M W R A Y, J R., called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WAGNER:

Q Mr. Ray, do you currently hold any governmental position?

THE COURT: State your full name for the record.

THE WITNESS: My name is William Wray. I was elected to the position of Clarkstown Justice.

Q Do you currently hold any form of governmental employment?

A In November I was elected to be Clarkstown Town Justice in the Town of Clarkstown. I was officially sworn in yesterday morning.

Q Judge Wray, were you present at a conversation which took place between the

plaintiff Al Tabakman and the defendant Peter Branti during the latter part of December at a cocktail party hosted by Kenneth Gribetz, the District Attorney for [93] Rockland County?

A Yes, I was.

Q Did you have occasion at that time to participate in or to overhear a conversation between plaintiff Tabakman and Defendant Branti concerning plaintiff Tabakman's reappointment or continuation as an assistant public defendant?

A We were all talking, but mostly I was listening.

Q Could you tell us as best as you can recall the gist of that conversation?

A The gist of the conversation was that, of course we would like to have Alan reappointed as public defender, and Mr. Branti said that he didn't have any objection to that. But that he didn't have any control of that and that it would be in our best interest to try to get the Democratic legislator to put Alan's name into the political process.

Q Did Mr. Branti at that time tell you or give you any information as to how the appointments or reappointments to

assistant public defender were being made?

A I am not sure if Mr. Branti did, although in conversations with him and others in the Democratic party, we were told that Mr. Tabakman's name --

MR. SCHOENBERGER: Objection, your Honor. It appears to be a hearsay [94] conversation.

MR. WAGNER: I will withdraw the question.

THE COURT: Just a second. Let us have the conversation limited to the conversation with Mr. Branti.

THE WITNESS: I believe I would have to say that we were told that the names should come from Madam Troy, the Democratic Chairwoman of Clarkstown.

Q Mr. Wray, at the time Judge Wray, at the time that you were elected Town Justice of the Town of Clarkstown, did you have occasion to review either by yourself or with plaintiff Tabakman the applicable rulings of the audit control and the Attorney General concerning the practice by a law partner before other courts within the county

or other co-equal justice courts?

A Yes, I did, both at the time that I was elected and before I decided to run.

Q What did you determine from that investigation?

A It was determined by --

MR. SCHOENBERGER: Objection. It requires a legal conclusion.

MR. WAGNER: I will withdraw the question, your Honor.

Q Can you tell us what these opinions were and who rendered them? [95]

A We discussed it on numerous occasions with Mr. Barone. I understand there were opinions from Audit and control and it was our understanding that as long as Mr. Tabakman didn't appear in the particular Justice Court in which I was sitting, that he would be perfectly qualified to continue as a public defender.

MR. SCHOENBERGER: Objection, your Honor, to that entire answer. I will ask that it be stricken as hearsay.

THE COURT: It will be stricken.

Q Mr. Wray, do you know of any situations in Rockland County where partners of

town or village justices practice not before their partner but in other courts of equal jurisdiction?

A Yes.

A Is it to the best of your knowledge and information an accepted practice?

A Yes, it is.

Q Mr. Wray, you are of course a member of the firm of Freedman, Wray, Wagner & Tabakman?

A Yes.

*

[100]

Q Have you seen this opinion of the --

A Yes, I read the papers. I did.

Q The opinion doesn't only speak of partners?

A I think that opinion can be distinguished.

Q May I ask my question?

A Yes. You certainly may.

Q That opinion does not only speak of partners, of Town, or Village Justice practicing before other Town Justices but it does

more specifically speak about public employees such as public defenders whose partners are judges?

A Yes.

Q Do you know of any other public defenders, assistant public defenders or municipal employees in the County of Rockland whose partners are judges that practice in those courts?

A I can't specifically name anybody.

Q Do you, sir, feel that there will be an impropriety if a public official like an assistant public defender whose partner was a Town Justice appeared before another Town Justice in the County of Rockland? [101]

A No. I don't.

MR. SCHOENBERGER: Nothing furthur, your Honor.

THE COURT: Mr. Wray, getting to this conversation that you had with Mr. Branti, was anything said at the time about the problem that would be created by your being the Town Justice with Mr. Tabakman being in the public defender's office?

THE WITNESS: In all the conversations we had with anybody in the political process that was never mentioned. I

believe that has been brought up I think personally as an afterthought.

THE COURT: Any further questions?

MR. WAGNER: Yes, sir.

REDIRECT EXAMINATION

BY MR. WAGNER:

Q To the best of your knowledge is there any other assistant public defender who has a law partner who is a judge?

A I really can't think of anybody at the minute. There are judges, Town Justices in the county who have partners going into other crime, to Justice Courts handling criminal cases, and I don't see why it should be any different for an indigent defendant as for a regular [102] defendant.

MR. WAGNER: Nothing further, your Honor.

MR. WAGNER: The plaintiffs call Theodore Dusanenko.

THEODORE DUSANENKO, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WAGNER:

Q Where do you reside?

A 2 Scott Drive, New City, New York.

Q Do you presently hold any official position in the county government?

A Yes, I do.

Q What is that position?

A County Legislator.

Q When were you first elected County Legislator?

A 1969.

Q You were just reelected in this past election of 1977, is that correct?

A Yes, I was.

Q Mr. Dusanenko, were you not at one time the minority leader of the County Legislature? [103]

A Yes, I was.

Q Mr. Dusanenko, are you familiar in any way with the political process involved in the appointments of department heads of

the County of Rockland by the County Legislature?

A To a large extent, yes.

Q Are you familiar in any way with the circumstances surrounding Mr. Branti's appointment?

A Yes, I am.

Q Could you tell us what you know of your own knowledge concerning that appointment?

A Mr. Branti, I may add, is a very qualified gentleman, was the choice of the majority caucus of the Rockland County Legislature and by majority caucus I mean the 11 of 18 members who were affiliated with the Democratic party who have the controlling power in that legislature.

Q Were you ever approached or consulted by the Democratic caucus or any of the members thereof concerning either the appointment of the public defender or the appointment of any of his assistants?

A Not in that department or any other department.

Q Did you ever make inquiries of any of the members of the Democratic caucus [104]

as to whether they would consider the appointment of anyone that you sponsored?

A Yes. I had asked several individuals to consider the continued employment of some individuals and that was all that I had asked.

Q What answers did you receive when you requested that?

A Of who?

Q Well, all right. I will withdraw the question.

Who did you ask to continue the employment of various individuals in appointed positions?

A I asked Legislator Goodfriend, I asked Legislator Colman, I asked Legislator Meehan, I asked Legislator Damiani, I asked Legislator Rotella.

Q Did any of these legislators react in any way to your request that they consider appointing people that you recommended?

THE COURT: Appointing to what?

MR. WAGNER: Withdrawn.

Q What position did you discuss?

I will withdraw that too.

Did you ever have occasion to discuss the assistant public defenders? [105]

A Yes.

Q Did you have occasion to discuss the continuation of Mr. Finkel or Mr. Tabakman?

A Mr. Finkel's name I had not mentioned but I did mention Mr. Tabakman's name.

Q Mr. Dusanenko, you represent the Town of Clarkstown, is that correct?

A Yes.

Q Mr. Finkel is not one of your constituents but Mr. Tabakman is, is that correct?

A To the best of my knowledge, yes.

Q How did you ask to continue Mr. Tabakman in employment?

A The people who I previously named.

Q You asked all of them?

A Yes. And I also asked Mr. Branti to find out, not specifically, I said what is the procedure that would be used for continued employment, et cetera.

Q What did Mr. Branti tell you?

A At that time, that the decisions were made, and it is beyond his ability to have any imput into those decisions at that point in time.

Q Did he tell you by whom the decisions were made? [106]

A No.

Q Did any of the other County Legislators respond in any way to your request that Mr. Tabakman be kept on?

A Some said it was imperative to have a sponsor to be on a Town Chairman's list or on a list of several legislators.

Q Did they define --

MR. SCHOENBERGER: Your Honor, I will object to all of that as hearsay.

THE COURT: Overruled.

Q Did they tell you, Mr. Dusanenko, what the definition of a sponsor was?

MR. SCHOENBERGER: Objection. Hearsay.

THE COURT: Let's see. Mr. Goodfriend is a defendant.

MR. WAGNER: Mr. Dusanenko is a defendant.

THE COURT: Mr. Coleman is a defendant.

MR. WAGNER: If I can save the Court some time all the individuals mentioned by Mr. Dusanenko are all county legislators and also co-defendants.

THE COURT: Overruled.

A What does that mean?

Q That means you can answer.

Did any of the other county legislators with whom you spoke define what they [107] meant by a "sponsor"?

A I was never clear in my mind because on occasion some people spoke that it would be the caucus, when they met. Some people said that the recommendations from individual legislators participating in the caucus would be helpful and other cases some people led me to believe that the political town chairman would pose or prepare such lists.

Q Taking them one at a time, would the sponsorship by a legislator have to be the sponsorship by a Democratic legislator?

A The representatives had no say in that matter.

Q I am not sure you understand my question.

You said that one form of sponsorship might be by a legislator. Would that have to be a Democratic legislator or could a Republican legislator have sponsored an individual and had him accepted?

A I myself had no participation into any appointments. We were not invited

to the Democratic caucus. All these choices were made by the Democratic caucus.

Q I don't think I have to ask you what the Democratic caucus is since it is evident. [108]

You also mentioned possible sponsorship by Town Chairmen. Did that mean sponsorship by either Republican, Democrat or Liberal or Conservative chairmen?

A To those people I spoke to, they were only discussing Democratic Town Chairmen at that time.

MR. WAGNER: Thank you.

I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. SCHOENBERGER:

Q Did any of the legislators you spoke to tell you that Mr. Tabakman would have to switch allegiance to the Democratic party, give money to the Democratic party, or support to the Democratic party to be reappointed?

A No.

Q You were not invited to the Democratic caucus, were you?

A Never.

Q You were not there when the Democrats caucused?

A No.

Q So you do not know for a fact whether these choices were made by the Democratic caucus, do you?

A Yes.* [110]

Q You do know that the public defender appoints his assistants, don't you?

A Yes.

Q Once again, you were not at the caucus?

A That is correct.

Q You don't know whether the assistants chosen by the public defender were chosen by the caucus, do you?

A Only through conversations, with others. I was not present at them.

Q But of your own knowledge?

A That's the knowledge I have, is from conversations with other people.

Q Of your own personal knowledge not based upon hearsay?

THE COURT: Counsel, there are a number of people that he has testified to

conversations with, who are defendants in this action.

I don't regard his conversations with those persons as being hearsay. I am interested in knowing what those conversations were if there were such conversations. So, please don't restrict him so much. [111]

BY MR. SCHOENBERGER:

Q You testified that you spoke with Mr. Goodfriend?

A Yes.

Q Do you recall the nature and extent of that conversation?

A Yes, sir.

Q Could you tell us in court what that conversation was?

A Yes.

It was in the offices of the General Fiscal Services in the same building and at that time I asked what was necessary in order to save one or two individuals who are currently or previously, let me say employed during 1977 in the public defender's office, that was Mr. Alan Tabakman and Mr. Manny Sanchez. In that conversation Mr. Goodfriend

suggested, well, if anything could be done he would be in favor of Mr. Sanchez, but on the other hand Mr. Tabakman was too closely associated with an opposition political party.

Q He never indicated to you, did he that the decision not to hire Mr. Tabakman was made in caucus, did he?

A I don't know. As you said I wasn't there. That part of a conversation was never discussed about who was not going to be returned. I think at that time whatever conversations took place were about the number of jobs, the ratio of the positions and the individuals who were going to receive new jobs, rather than deciding on which individuals previously employed were going to stay. [112]

Q Once again did Mr. Goodfriend or any other legislator, Democratic legislator, tell you that Mr. Tabakman or anyone else's job, excuse me, that Mr. Tabakman's job was conditioned upon him swearing allegiance or supporting the Democratic party; did they?

A You asked that before and I said no.

MR. SCHOENBERGER: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. WAGNER:

Q Mr. Dusanenko, you mentioned that you spoke to some four or five individuals concerning the retention of Mr. Tabakman in his position. Did any of those individuals ever mention or bring up anything involving the fact that Mr. Tabakman's partner had been elected judge and therefore Mr. Tabakman was not eligible for that job?

A Yes.

Q Who brought that up? [113]

A The same Mr. Goodfriend.

Q Was that at the same conversation when he referred to the political allegiance?

A Yes.

Q Which did he refer to first, if you recall, political allegiance or the fact that his partner had been elected judge, or was it part of the same conversation?

A It was part of the same conversation.

Q In your opinion, Mr. Dusanenko, when Mr. Goodfriend -- who I believe was the former chairman of the county legislature?

A No.

Q The majority leader?

A I don't believe so.

Q All right. I am wrong on that.

Mr. Dusanenko, when Mr. Goodfriend referred to Mr. Tabakman's active participation with an opposition faction, in your opinion was he referring to the fact that he was the partner of a Republican Town Justice who had just run and been elected?

A Yes.

MR. SCHOENBERGER: Objection, your Honor.

THE COURT: Overruled. [114]

MR. WAGNER: No further questions.

THE COURT: I want to get back to this conversation that you had with Mr. Branti. He told you that the decisions had already been made with respect to who the new assistant public defenders would be and he could not have an input.

THE WITNESS: He didn't say the first part of that, I don't believe, your Honor. I think he stated that the decision was out of his hands. I don't believe he elaborated on it any further.

THE COURT: Did he say whose hands it was in?

THE WITNESS: I don't believe so.

THE COURT: Thank you.

(Witness excused.)

MR. WAGNER: Your Honor, for the purposes of this motion, the plaintiffs rest.

THE COURT: All right.

MR. SCHOENBERGER: Your Honor, at this time I would like to make a motion.

The motion is to deny the preliminary injunction and dismiss the temporary restraining order on the basis that the plaintiffs have failed to meet the quantity of proof necessary in this case and have failed to set out a prima facie case.

THE COURT: I will reserve decision on that. [115]

MR. WAGNER: May I be heard in opposition or would your Honor rather go on with the hearing?

THE COURT: I would rather go on.

MR. WAGNER: I will reserve my argument until the conclusion of the hearing.

MR. SCHOENBERGER: I call Mr. James K. Anderson.

J A M E S K. A N D E R S O N, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHOENBERGER:

Q Mr. Anderson, are you employed by the County of Rockland.

A I am.

Q In what position?

A Personnel officer.

Q Can you correlate for us what a personnel officer is under the civil service law?

A Under the state civil service law he is in charge of the administration of the civil service law for the County of Rockland and all civil divisions therein.

Q Can you briefly explain to the Court and to all of us the different classifications of employees within the County of Rockland? [116]

A The classification of employees in the County of Rockland, under the statewide classifications system all public employees are divided into two broad classes, the unclassified and classified.

The unclassified service consists of elected officials and teachers essentially. The classified service comprises all others.

The classified service in turn is divided into four broad jurisdictional classes, one being the competitive class which has the requirement not only of minimum qualifications, but the requirement of passing a competitive examination.

The non-competitive class, the second class, is similar to the competitive class, having minimum qualifications, but no examination, formal examination is required on a competitive basis.

A third class in terms of numbers is a labor class, which consists essentially of unskilled laborers.

In the fourth class, the smallest of all the classes is called the exempt class, a category for which no examination is deemed practical or feasible for the reason that the positions in the exempt class essentially are those of a deputy or somebody in a confidential relationship to its principal. [117]

Q Am I correct in understanding

that one of the characteristics of the exempt class is that the principal would have a confidential relationship to his appointees?

MR. WAGNER: Objection. It is a question of law, and No. 2, I don't think the witness is qualified to answer it.

MR. SCHOENBERGER: Your Honor, he acts as a Civil Service Commissioner for the County of Rockland and he is certainly qualified to answer it.

THE COURT: Overruled.

A The positions are placed in the exempt class because of the, of a policy determination, carrying out some of the major functions of the principal as though the principal were present, or a confidential relationship. All three or any one of those factors may be present in the determination of a position being placed in the exempt class.

Q How many, approximately, how many employees are employed by the County of Rockland?

A Roughly 2,000, sir.

Q Out of those approximately 2,000 employees in the County of Rockland, do you

know either exactly or approximately how many belong in that exempt class? [118]

A Under 50.

Q Are attorneys in the county attorney's office, public defender's office, and district attorney's office included within the exempt class?

A Mostof them.

Q Are assistant public defenders included in the exempt class?

A Yes. They all are.

Q Are assistant county attorneys included in the exempt class?

A Assistant county attorneys, by that title are all included in the exempt class.

Q Approximately how many exempt attorneys are there in the county attorney's office, public defender's office, and district attorney combined?

A May I refer to my notes?

Q Yes, you may.

Do you need some notes to refresh your recollection?

A It's approximately 34, counsel.

I would like to look at my notes.

MR. WAGNER: I will accept that approximation, your Honor.

THE WITNESS: All right. [119]

Q That's 34 out of approximately 50?

A Yes, sir. Actually there are 42 positions other than some special education aides, there are approximately half a dozen specialized at the Mental Health Center. There are 42 remaining positions that would fall in the category of deputy or confidential relationship. Of those 42, three are secretarial or assistant types such as a secretary to the district attorney, confidential secretary to the president of the Community College, and the assistant to the chairman of the County Legislature. Deputy county clerks, deputy county treasurer, the head of the Office of Civilian Defense and Emergency Services. That should add up to about 7 or 8, all the rest of them are attorneys in the three offices of the county which employ attorneys, the district attorney, the county attorney and the public defender.

Q Could you explain to us who appoints an exempt appointee to his job and what his term of office is, if there is a term and

how is it determined that his tenure may end?

A Under the civil service law of the State of New York, the appointing authority in most cases is a single individual although it may be a board or commission. [120]

Q Is that generally the department head?

A The department head. It may be a single head or a commission will make the appointment of a, to an exempt class position. There is no review of qualifications of any appointee to an exempt class position.

The incumbents of exempt class positions are deemed to hold their position at the pleasure of the appointing officer without restriction as to appointment or removal.

Q Is there such a thing as a permanent appointment of an exempt man so that he can remain in office and succeed his appointing authority?

A No, sir.

Q When an individual is appointed to an exempt position he is required to take an oath of office, is he not?

A All employees are required to take an oath of office including those appointed to an exempt class position.

Q I show you Plaintiff's Exhibit 2, Plaintiff's Exhibit 4, and Plaintiff's Exhibit 6. Do any of those indicate to you an appointment beyond the pleasure of the appointing authority?

A They do not. [121]

Q Do you know what the purpose of those letters are by any chance?

THE COURT: There is not a question in this case but that the appointment is at the pleasure of the public defender. I don't see any point in offering evidence on that subject. The testimony of the plaintiffs' witnesses have been to that effect.

MR. SCHOENBERGER: Your Honor, the reason that I am doing this is that plaintiff Finkel is taking the position that he is permanent and cannot be discharged. I wanted to clarify it.

THE COURT: I don't care what position he is taking. I don't think there is any question but that the appointment is at the pleasure of the appointing authority.

The issue in this case is how that pleasure is exercised.

MR. SCHOENBERGER: Just a brief few more questions, your Honor.

Q I would like you to look at Plaintiffs' Exhibit 5, 3 and 1, all purported to be reports of personnel changes. Are you familiar with those forms?

A I am.

Q Can you tell me who processed forms like these?

A They are initiated by the appointing authority and proceeds through [122] my office, the personnel office of the County of Rockland.

Q The appointing authority is the one who solely determines the qualifications of his appointee, am I correct?

A That is correct.

Q Whatever they put on that form would be satisfactory to you?

A No, sir.

Q If they were to check a box that someone was permanent would that make him permanent?

A No. It would not.

MR. SCHOENBERGER: Nothing further, your Honor.

CROSS EXAMINATION

BY MR. WAGNER:

Q Mr. Anderson, to what political party do you belong?

A I am a registered Democrat, sir.

Q When were you appointed as a county personnel officer?

A I was appointed in November, 1961.

Q Were you appointed for a set term or was it at the pleasure of the County Legislature or Board of Supervisors? [123]

A Under the Civil Service Law of the State of New York the personnel officer has a fixed term of six years. I was initially appointed by the Board of Supervisors, reappointed by a Board of Supervisors which was Democratically controlled and reappointed by a County Legislature which was Republican controlled.

Q When was that last reappointment?

A Approximately four years ago, sir.

Q Your job is not civil service?

A it is in the non-competitive class of the classified service, yes.

Q I am a little bit hazy on your terms. You are appointed for a set term but you are protected by the Civil Service

Law, you cannot be discharged at the discretion of your employer?

A That is correct. I am protected under two categories, one as a war veteran in the non-competitive war veteran under Section 75 of the Civil Service Law of the State of New York, and as a public officer holding a specified term of office pursuant to the public officers law.

Q Mr. Anderson, you indicated that there were some approximately 50 employees in the class of Mr. Finkel and Mr. Tabakman [124] which I think you said was non-competitive.

A No, sir. It is not non-competitive in the sense that the word is used in the Civil Service of the State of New York. They are in one of the four jurisdictional class categories as exempt.

Q I see. There are some 50 employees of whom you said I believe 43 were attorneys?

A No, sir. I said there are approximately 50, or under 50, a half dozen or some being special education aides in our mental health center, 42 being in the category of policy determiners, policy carry outers with a confidential relationship.

Of the 42, 34 give or take one or two are attorneys.

Q Of those 34 who are attorneys, and I believe that embraces the county attorney's office, the district attorney's office and the public defender's office, are you familiar with the political make-up of those appointees?

A I am not.

Q Do you know whether any of those appointees currently is a Republicans?

A I do not, of my own knowledge.

Q Is it your opinion, Mr. Anderson, that a public defender or a district attorney [125] or a county attorney has the unlimited right to terminate his employees, deputies, for any reason whatsoever?

A In the categories, yes. To that extent, yes.

Q Mr. Anderson, if the civil service rules or state law conflict with the --

THE COURT: Could it be because he is black?

THE WITNESS: No, sir. I am saying under the civil service law, and that is --

THE COURT: I heard just exactly what you said. But are you saying that

because he has this absolute right to discontinue somebody, he can do it because he is for example black or because he is Jewish?

THE WITNESS: Under the civil service law, he could. He would have other remedies and I am not saying that he doesn't have other remedies under other statutes but not under the Civil Service Law of the State of New York. He would have remedy under other federal statutes but under the Civil Service Law of the State of New York as an exempt class employee, the appointing officer has a full right to employ who he likes and discharge who he likes and for whatever reason.

THE COURT: And he can give the reasons and still do it and not be subject to attack under the civil service. [126]

THE WITNESS: Not under the Civil Service Law.

THE COURT: I take it a part of what you are saying is that under some of the other laws that you cited, state or federal, what he does can be undone.

THE WITNESS: Yes, sir.

BY MR. WAGNER:

Q In your opinion, if the civil

service rules or the state law are in conflict with or violate the U.S. Constitution should they be followed?

MR. SCHOENBERGER: Objection, your Honor.

THE COURT: I think I will sustain the objection.

Q Mr. Anderson, in your opinion and I am asking you this only in your own opinion, and if you don't have an opinion you can decline to answer. In your opinion do the federal laws and the federal Constitution protect an individual who is being terminated from a position he is performing successfully simply because of his political affiliation?

MR. SCHOENBERGER: Objection.

THE COURT: Sustained.

MR. WAGNER: Nothing further.

(Witness excused.) [127]

MR. SCHOENBERGER: I call the public defender, Peter Branti, Jr.

P E T E R B R A N T I, J R., called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHOENBERGER:

Q Are you an employee of the County of Rockland?

A Yes.

Q Can you tell me your position, please?

A As of January 3rd I am the public defender of Rockland County.

Q 1978?

A Yes. That is correct.

Q As a public defender of Rockland County do you have a staff, part of which consists of assistant public defenders?

A That is correct, sir.

Q Can you tell me what was involved, the process you went through in determining who was to be your assistant public defenders?

A If I may, and with the Court's indulgence, in about March or April of 1977 I decided that I would leave the District Attorney's office, if I could, and seek the post [128] of public defender. At that time I made my feelings known to certain individuals, some were politicians, others were attorneys. One of the attorneys I spoke with was a Mr. Feinberg. In March of 1977 or April, whatever

it was, I had decided that if I became public defender, Mr. Wayne Feinberg would be my chief assistant and I asked him at that point if he agreed.

I made my feelings known to both Democrats and to Republicans that I thought I was a very capable attorney in my opinion, and I wrote a letter to the Chairman of the Rockland County Democratic Party.

In that letter I indicated to her my qualifications, that I was interested in the post and that I would be happy to meet with any group of people and supply a resume, if they were so interested. The letter was never acknowledged by the Democratic Party. I want to make that clear now. I actively sought the post, and in November of 1977 I spoke with each legislator. I spoke with the Town Chairman, I spoke with both Republicans and Democratics about the position of public defender.

After the election it became clear that I was a valid contender for the public defender's post. And I spoke again to both Democrats and Republicans, one of the Republicans I spoke with was [129] Mr. Dusanenko.

I let it be known that it was not an elective post and that I wished to discuss my appointments with anyone who was sitting on that body, that I would like to discuss names of attorneys that were available, but that one thing each individual had to understand that any name that was supplied to me I would have the right to veto it because I was familiar with every criminal attorney in Rockland County. I had discussed many names.

At no time was I ever threatened to hire anyone, nor was I threatened to fire anyone from the public defender's office.

I spoke with Mr. Sanchez who was a member of the firm of Freedman, Wray, Wagner & Tabakman as early as May of 1977 or June. I believe Mr. Tabakman was present at that time. It was at a picnic held for an assistant district attorney who was leaving the office.

I made it clear to everyone who was sitting on the legislature, and in particular the Democrats that Bill Nelson would remain in the public defender's office.

Mr. Nelson is a black attorney

that started with me in the district attorney's office, and probably the most competent attorney in the public defender's office. [130]

MR. WAGNER: Your Honor, up to this point I have not objected to the narrative form of the testimony. I believe we are getting far afield. I concede the qualifications of Mr. Nelson. He is a friend of mine too, but why don't we get on with the selective processes.

MR. SCHOENBERGER: One of the questions is how were the public defenders to be hired and not to be hired. This is a process that he is presenting to us.

THE COURT: Let us go on. It is twenty to seven, gentlemen.

A The point I am trying to make, your Honor, is that Mr. Wayne Feinberg--no one from the Democratic caucus ever spoke to me about Wayne Feinberg, who is now the chief assistant public defender. No one spoke to me about Bill Nelson who is now the executive assistant, and then a former chief assistant public defender. John Allison who was an assistant public defender at this point and an assistant district attorney until June 3rd, I talked to him in March of 1977, when he told me

that he decided he wanted to leave the employ of the district attorney's office. At that point I asked him "John, stay with us until the end of the year. If by some stroke of good fortune I should get to be public defender [131] you will have a job with me. If you don't, I will do everything in my power to try to help you because you are a competent attorney."

No one came to me and said, "You must take Allison with you, you must take Wayne Feinberg with you, and you take a, leave Bill Nelson in the office."

Mr. Dusanenko came to me about Alan Tabakman, one of the plaintiffs. Madam Troy, a Democratic chairman for the Town of Clarkstown, a Democratic chairman came to me about Alan Tabakman. And I said I would see what I would do. I received about 50 telephone calls from individuals who wanted six positions which were left in the public defender's office.

Each one that I wanted to get rid of I would send to certain individuals. There is no question that the Democratic caucus played a part in the selection of

the six remaining positions, but we tossed many names around. I never attended a caucus meeting. I didn't even know when caucus meetings were held. I spoke with the chairperson of the Democratic party who asked me questions about certain lawyers, if I thought they were qualified, would I be willing to work with them, could I work with them.

One of those individuals was a person I selected, a Mrs. Laurna Bernard. [132] I met Mrs. Bernard two or three years ago when she--I believe at the time was, had made known her intention to run in a primary or a family court for a family court judgeship. I remember reading the report at that time that came out. I don't know whether it was a Bar Association Committee or not, but she had the highest rating of all the individuals at the time. I was happy for Mrs. Bernard at that point. I said I would like you to come to work for me. She said she was interested. I let my wishes known to the Democratic chairperson of the party. I went through each of my appointments that I made in exactly the same way. I spoke

with Mr. Barone, on numerous occasions about his staff. I spoke with him about Mr. Tabakman.

I asked Mr. Barone if Mr. Tabakman was still a partner with Judge William Wray. He ~~told~~ me, yes, but there was nothing wrong with it. I said that's your opinion. I asked about Manual Sanchez, and he said yes, he is an associate. Mr. Sanchez did come in fact to see me, as a man. Mr. Sanchez didn't bring Judge William Wray with him when he came to see me. He said, "I need a job. My wife is pregnant."

I said, "Are you an associate in the firm?"

He said, "Well, I do have an association but we will be breaking it up [133] shortly." I appointed Mr. Sanchez. I was at a cocktail party held by the members of the district attorney's office of which I was the executive assistant D.A., a party that the general public was invited to in a small confines of the district attorney's office.

I was approached by Mr. Alan

Tabakman together with Judge William Wray, a man who had been elected. A man who knew that my staff, if I became public defender it was common knowledge at that point --

MR. WAGNER: Objection.

THE COURT: Sustained. We want the testimony, not the argument.

I think we better go back to questions.

BY MR. SCHOENBERGER:

Q At the Christmas cocktail party, when Mr. Wray and Mr. Tabakman approached you--speaking from your own personal feelings, your own personal impression--did you feel that they were trying to pressure you?

MR. WAGNER: Objection. It calls for a conclusion.

THE COURT: Sustained.

Q Did you feel that it was improper for a Judge from the Town of Clarkstown -- [134]

THE COURT: Objection sustained.

Q Is it or is it not true, that your single criteria in selecting people for the public defender's office to be your assistants was quality and competence?

A That was most of my criteria. I would take a person with less experience than someone else who didn't have a private practice that wouldn't interfere with the position, that I could work with and train to fit in what I thought a public defender's office should be. I wanted no appearances of poor ethics.

MR. WAGNER: Objection, your Honor. We are getting back to the narrative testimony again, now.

I think the question has been answered, sir.

Q Did you feel it was an impropriety?

MR. WAGNER: Objection again. I am sorry you didn't finish.

Q Do you feel that it will be an impropriety and reflect poorly upon your office as public defender if you had an assistant public defender whose partner was a justice in the Town of Clarkstown?

A I feel that it would have been an impropriety to have a public defender who had a partner as a justice in any town in Rockland County, sir. I am certain the district attorney would

have something to say about it if I did do that, and rightfully so. [135]

Q After you determined which people you yourself wanted in your office to be a part of your office, were there still some vacancies?

A There were six vacancies.

Q At that time in the process of determining how to fill the six vacancies, did you seek recommendations from the Democratic and Republic parties in Rockland County?

A I sought them primarily from the Democratic party. I did speak to Mr. Dusanenko about Mr. Tabakman. I never spoke to Mr. Dusanenko about Mr. Sanchez.

Q Even if a name was referred to you by the Democratic party did you or did you not have an understanding that you had veto power?

A That is correct. I made that clear, if I may just expand on the answer; I made that clear. I refused to comment on whether or not I was going to be the public defender until everyone else knew that that was going to be the way that I would accept the position.

Q When people came to you and spoke to you, you said you had some 50 phone calls, and I imagine numerous people came and spoke to you. Did you ever use the excuse that you had to get support, to get people off your back? [136]

A I always used that excuse.

Q Did you ever require any of your assistants to swear allegiance or support the Democratic party?

A Never.

Q With reference to Mr. Sanchez, did you keep him on with the specific understanding that you would terminate his relationship with the firm of Freedman, Wray?

A No. When he approached me for a job he made it clear that he would be severing the relationship.

Q If he had not made that clear to you, would you have felt it was an impropriety for him to work as an assistant public defendant?

A I would have written to Judge Gagliardi and asked his opinion on it.

Q You have been an assistant district attorney for how many years?

A 1972. I worked for six months as a volunteer right after being admitted to the bar, excuse me, after graduating from law school and being admitted to the bar because I had no other experience. I was a truck driver.

Q While you were employed at the district attorney's office did you have occasion to view the activities of the public defender's office? [137]

A I didn't finish my other answer.

In 1973 I took an appointment to the district attorney's office as the only full-time assistant district attorney that I knew of in the office at that point. Yes, I had a very close relationship with the public defender's office since 1973. I have seen public defenders come in and public defenders leave.

Q In your professional opinion, did you ever feel there was an improper relationship between the firm of Freedman, Wray, Wagner & Tabakman and the public defender's office?

A Definitely.

MR. WAGNER: Objection.

THE COURT: Overruled.

A It was common knowledge around the courthouse, and particularly in the district attorney's office it was joked about that the public defender's office was an annex of Freedman, Wray, Wagner & Tabakman.

Q Do you have any comments that you would like to make concerning the conduct of Mr. Tabakman and/or Mr. Finkel as assistant public defenders that you feel influenced you in your determination as to whether they should stay in your office?

A The individuals that I kept in the public defender's office were in my [138]
opinion the most competent trial attorneys on that staff. Mr. Nelson has an exceptional reputation. Mr. McAlevey, while not having a great deal of criminal experience prior to his entering the public defender's office has gained the respect of every assistant district attorney in Rockland County.

As a matter of fact, we call him Komikasi Jack because he will try any case at the drop of a hat.

MR. WAGNER: Your Honor, again I have to object to this narrative testimony.

THE COURT: I will overrule the objection.

A He has absolutely no fear whatsoever of the jury system or of a courtroom or of a jduge. He will fight tooth and nail on every case that comes down. That was the man that I wanted to stay on in the public defender's office with me. It was also my main competition for public defender. Mr. Sanchez has had a reputation among the local assistant district attorneys that worked the local courts as being tenacious on every case that he has. When a young assistant D.A. would come in to me and say Mr. X is a nice guy from the public defender's office or Mr. B is, I knew one thing, that he was getting his own way in the courts that that attorney was in. They continually came in and cried about Mr. Sanchez. I [139]
have had cases, I have had an opportunity I should say, to see Mr. Finkel work in the past five years. Mr. Finkel in my opinion is a competent attorney. I have seen Mr. Tabakman in the past two years or so,

on a limited basis as he indicated we had one felony case together where we selected a jury and it resulted in a plea. He is a competent attorney. I have seen him handle conferences, bail applications, discussions about clients that the district attorney would like to speak to on certain other matters, and I was not impressed with either attorney. But, they are competent attorneys.

The criteria I used with the men who stayed in the public defender's office, that I insisted that I wanted in the public defender's office, was a simple one, would I want these individuals to defend me if I needed them. That's the criteria that I tried to use.

Again, there is no question that I discussed each appointment with the Democratic caucus. I am not trying to deny that or to hide it. I felt they had an opportunity to submit names to me, that if I thought these people were qualified I would accept them if I so desired; if for any reason I didn't want them I had the right to veto them. As far as I am concerned I vetoed Mr. Tabakman. [140]

Mr. Dusanenko spoke to me about Mr. Tabakman and so did Mrs. Troy, a Democratic chairperson, in the town that he lived in. When I spoke to Mr. Dusanenko there were only limited positions available, there were discussions going on and I did tell him, I have no more imput at this point, I am waiting to see the names that are supplied to me before I accept or reject anyone.

I did say to Mr. Dusanenko at that point when he mentioned Mr. Tabakman's name to me, what his feelings were about Judge Robert Stolerich's law clerk. Judge Stollerich, excuse me, your Honor, is a Republican. I don't know whether his law clerk is a Republic or not but I have always been impressed with him.

Mr. Dusanenko at that point said he has a job, I am not worried about it. I am concerned about Mr. Tabakman.

I said fine. There was never any other discussion on it.

Q Did you also veto Mr. Finkel?

A I never considered his staying on in the public defender's office. I like

Mr. Finkel; Finkel in my opinion is a wonderful person. Had the president of the United States come to me and insisted that Mr. Finkel stay on as public defender, I probably would have vetoed Mr. Finkel in that situation. I feel bad that I have to say these things here, your Honor, but I am trying to tell you what I feel in my heart. [141]

Q Did anyone ever tell you that if you were going to be public defender you will have to fire Mr. Finkel or Mr. Tabakman?

A Never. No one ever told me that you are going to hire Mr. X or anybody else, no one ever said that to me.

Q I will show you a list of the former public defenders, the former staff. It is in with our papers to the court. Are there any names there which are Democrats which you didn't retain?

A Yes.

Q Can you tell us who they are?

A James Fitzgerald. Stuart Leudan. Aaron Finkel. That's it.

Q I will ask you what I hope is one final question. Your decision to hire,

terminate the assistant public defenders was primarily your decision based upon competence and integrity of the office which you wished to fill, is that correct?

A Yes, that is correct.

MR. SCHOENBERGER: Nothing further. [145]

*

Q With Manuel Sanchez?

A I don't know. I am sure you are not. Mr. Sanchez has indicated to me that.

Q With Barry Weiss?

A I believe Barry Weiss works for Mr. Wray and Judge Wray and Mr. Tabakman and Mr. Wagner.

MR. FINKEL: I have no further questions.

CROSS EXAMINATION

BY MR. WAGNER:

Q Mr. Branti, as one of the defenders you were present here during the testimony of Mr. Tabakman and Judge Wray when they referred to a certain conversation in the public, in the District Attorney's Office Christmas party. In fact you yourself alluded to it in passing?

A Yes.

Q That conversation did take place?

A No question.

Q Is it not a fact that at that time you told Mr. Tabakman in the presence of Mr. Wray that he would have to get a recommendation or a referral from a Democratic legislator to be considered by you for appointment to one of the six slots that were still open? [146]

A I believe at that time what I said was that I asked the Democratic caucus to compile a list of names. And that is his name should be on the list and I should consider it. He had already had, at that time prior to that, I believe this indication may have been on the 23rd, I don't recall when the party was, I had already spoken with Mr. Dusanenko about Mr. Tabakman.

Q What you told him in effect was that the other six appointments that you had not in your own mind decided on were going to come through the Democratic caucus and he would have to be referred by one of them to be considered by you?

A No. I said go get somebody to put you on a list of names that I will be

choosing from for the remaining portion.

Q Where did the list of names come from?

A Not from the Democratic caucus.

Q Maybe I misheard your testimony. Didn't I hear you just testify that you filled all but six spots and then the Democratic caucus came up with the recommendations for the other six?

A I don't believe it was the caucus. I talked to individual people about it. I was never at a caucus meeting. I have no idea of what was discussed. [147]

Q You have currently, if I am not mistaken, nine assistant public defenders?

A That is correct.

Q And of them John Allison came to you from the District Attorney's office where you had worked with him, and Mr. Costa I understand was a former assistant prosecutor with Mr. Nadjari?

A Yes. A former police officer who went to law school with me.

Q Mr. McAlevey was a holdover from the prior public defender; Mr. Nelson and Mr. Wayne Feinberg besides being a close

friend of yours was also a District Attorney?

A Yes.

Q By the way, there are three others in addition? By the way, you don't dispute the fact, do you, that these are all Democrats?

A No. I don't dispute it. I assume they are. I haven't checked the registration.

MR. SCHOENBERGER: With the exception, the registration is attached.

Q Mr. Sanchez was not registered.

John McCabe, do you recall who referred that name to you? [148]

A I believe I discussed him with the county attorney's office. He had applied for a job with the county attorney.

Q The county attorney is who?

A Marc Parris at this point.

Q Marc Parris gave you the name John McCabe?

A He asked me if I would consider him for the public defender's office.

Q In the process of your consideration did you discuss this with the Democratic legislators?

A No.

Q Gerald Blumenfeld, where did you obtain his name from?

A I knew Mr. Blumenfeld for a number of years. I believe his name was mentioned to me by Ms. Cornell.

Q The chairman of the Democratic party?

A Yes.

Q Laurna Bernard, you said you knew because she ran for family court judge?

A I believe she ran in a primary for that.

Q You have conceded, I believe without question that Mr. Tabakman and Finkel are competent attorneys and were properly performing the functions of their jobs at the time you took office, is that correct? [149]

A I think I said that I thought they were competent attorneys. I never made any indication on whether they were properly performing their functions as assistant public defenders.

Q Mr. Finkel has been an assistant public defender for some --

A Five years.

MR. FINKEL: Seven.

Q Do you know what John McCabe's criminal background is, how much criminal law he has practiced?

A He has had some limited criminal experience. He's a young man that I grew up with who I feel will move in. He has done a lot of appellate work on the civil end who I feel will move in and become my appellate man on the criminal end.

Q Gerald Blumenfeld, do you know what background he has in criminal law?

A I have had numerous cases with him in the Rockland County court. I talked about some cases that were pending.

Q How about Laurna Bernard, has she done extensive criminal work?

A Mrs. Bernard was a former Town Judge I believe, a number of years ago who had both civil and criminal cases before her at that time. [150]

Q Did any of these three to your knowledge handle anywhere near the volume of criminal cases that Mr. Finkel did in the seven years and Mr. Tabakman did in the 2-1/2 years he was in the public defender's office?

A I have no idea what their volume was. I am sure the number of cases could not compare.

Q Other than Mr. Tabakman, who you said was mentioned to you by Mr. Dusanenko, was the name of any other Republican suggested to you by anyone?

A I don't believe so.

Q You received 50 phone calls sponsoring people, about 50.

A Not sponsoring people.

Q Urging you to consider people?

A Not urging. I am talking about individuals. I said approximately 50 phone calls. I take that back. It's an exageration. I received numerous phone calls from attorneys that I met every day in the county court house asking for jobs.

Q It is your testimony that not one Republican except Mr. Tabakman was recommended to you by anyone?

A No. To be honest with you, sir, I expected that Mr. Grogan, who was voted the minority leader prior to my selection would be in touch with me to discuss any available attorneys he had. I never re- [151]

ceived any telephone call from him. Mr. Dusanenko sought me out and we discussed Mr. Tabakman. Mr. Grogan never called.

Q You admit that you did discuss your appointments with the 11 members of the Democratic caucus of the County legislature?

A Not with all 11 members.

Q But individuals?

A I never attended a caucus. I did discuss it with some Democratic legislators, that is correct.

Q You indicated that the only reason that you considered Mr. Sanchez qualified and Mr. Tabakman not was because Mr. Sanchez had announced his intention to sever his relationship with with the firm of Freedman, Wray, Wagner & Tabakman?

A With the firm of Freedman, Wray & Tabakman?

That was not my only reason for retaining Mr. Sanchez. I believe I indicated earlier that Mr. Sanchez was one of the individuals who would go to the wall in a local court, and excusing the expression, your Honor, would battle to the wall for the best possible plea, the best possible

defense that he could give his client. He had that reputation in the District Attorney's [152] office. That was a consideration.

Q Now, did you ever prior to the institution of this action discuss this impediment with Mr. Tabakman by virtue of the fact that his partner is a Town Justice, and offer him the opportunity of severing his partnership to remain as a deputy public defender?

A No, I didn't. I felt that that was Mr. Tabakman's responsibility to come to me.

I resented that he brought Judge Wray with him.

Q Just a minute, Mr. Branti. The party we are talking about was a party given by Mr. Kenneth Gribetz, the District Attorney of Rockland County, is that correct?

A That is correct.

Q Invited to that party besides the general public were the current public defender's staff which included Mr. Tabakman and Mr. Wray, and also Town Judges, correct, of which Mr. Wray was then?

A I believe, I don't know if that's how he got his invitation or not.

Q Why do you say that Mr. Wray brought Mr. Tabakman to you when they were both invited by Mr. Gribetz; in fact, you too were invited by him. [153]

A I didn't say that. I said he had Judge Wray with him when he spoke to me.

THE COURT: Just a second, gentlemen. Our reporter is tired to begin with. He can't write when you are talking as fast as you are. And when both of you are talking it goes out the window.

MR. WAGNER: I apologize, your Honor.

Q If Mr. Tabakman were to today sever his relationship with our law firm would you have any objection to retaining him as an assistant public defender?

A Probably.

Q What would that be?

A Mr. Tabakman is not going to fit in with what I had planned for the office.

Q You indicated that you were looking for suggestions for names, imput as you put it for the open six positions that you had not already filled. And you also indi-

cated that you had a final veto as to anybody that was selected, is that correct?

A Selected by who? I don't know what you mean.

Q All right. That any name that was put forward to you had a right to veto?

A That is correct.

Q Now, when you were appointed public defender who notified you of your [154] appointment?

A I believe Mrs. Cornell, I believe.

Q Did you have any discussions with the so-called Democratic caucus either prior to, I am sorry, strike that.

Did you have any discussions with the Democratic caucus, either the entire group or individual Democratic legislators prior to your appointment as public defender?

MR. SCHOENBERGER: Objection, your Honor.

THE COURT: Overruled.

A On what basis? I had conversations, yes. About what, I don't know.

Q You were actively seeking the job of public defender, is that correct?

A That is correct.

Q Were you ever asked by any of these legislators who agreed to support you whether you in turn would support certain names which they put forward as your appointees?

A Never. That's why I didn't think I was going to get the job, to be honest with you.

Q At no time did any Democratic legislators ever ask for any quid pro quo from you in return for their support? [155]

A No.

Q Now, how long have you practiced law in Rockland County?

A I was admitted to practice in '72.

Q At that time in '72 do you know whether Laurna Bernard who is one of your appointees was a partner in the firm of Prindel, Maidman, Windheim & Bernard?

A I believe that was the firm that she had been a partner in.

Q Were you aware of the fact that Mrs. Bernard whose partner Judge Robert Maidman is a co-equal judge with Wray who practiced in the Justice Courts in Rockland County?

A I am sorry, you will have to repeat the question.

MR. SCHOENBERGER: Objection. Objection as to its relevance, your Honor.

THE COURT: I am not sure of its relevance but I will overrule the objection.

THE WITNESS: Could I have the question read back?

(Record read.)

Q Were you aware of the fact, sir, that Mrs. Bernard, who is one of your appointees, was a partner in the law firm [156] of which Judge Robert Maidman was also a partner and Mrs. Bernard practiced criminal and civil law in Justice Courts in the County of Rockland, not of course before her own partner but in other Justice Courts?

A Yes.

Q At the time she was a member of the partnership, one of her partners was a Town Judge?

A I have no idea.

Q Would that make any difference in your mind with regard to her qualifications?

A Presently?

Q Yes.

A No. She is no longer a member of that firm.

Q Do you know a Judge Samuel Miller?

A Yes, I do.

Q Have you ever appeared before Judge Miller?

A Yes.

Q Do you consider Judge Miller to be ethical?

A I would assume he is ethical. I have never attempted to pass on anyone else's ethical qualifications but only what I see directly that affects me.

Q Do you know Rayfield Mertzel, Mayor of Haverstraw, also an attorney? [157]

A Judge Miller's partner, yes.

Q Do you know whether when they were partners Rayfield Merzell --

MR. SCHOENBERGER: Objection, your Honor.

THE COURT: I think this is going far afield.

MR. WAGNER: I will withdraw the question.

Q Mr. Branti, I show you Plaintiffs' Exhibit 7 in evidence, and it is your testimony and statement that the selections were actually made by the Democratic caucus composed of the parties?

MR. SCHOENBERGER: Objection. Your Honor, this is in evidence only to show that it was in the newspaper, not as to the truth contained therein. It can't be used on cross examination.

THE COURT: What rule of law are you drawing on for that interesting conclusion?

MR. SCHOENBERGER: This is only in evidence.

THE COURT: Overruled.

Q It is your testimony and statement that the selections were actually made by the Democratic caucus composed of the parties 11 county legislators, was completely incorrect?

A It is my testimony that the selections were actually made. That is not my [158] statement, No. 1. I had been interviewed for this particular article and again I told this particular newspaper reporter exactly what I said here. It is my testimony that that's not true; it is my testimony that I discussed each of these positions with various members who I assume were present at a Democratic caucus.

Q Various members of what?

A The Democratic party, and Mr. Desanenko, a member of the Republican party.

Q Did you appoint anybody who was recommended by Mr. Dusanenko?

A The only recommendation Mr. Dusanenko made was Mr. Tabakman.

MR. WAGNER: Nothing further, your Honor.

REDIRECT EXAMINATION

BY MR. SCHOENBERGER:

Q Earlier you spoke about Mr. Grogan. Is that the same Mr. Grogan who is a legislator for the Town of Clarkstown and the Republican minority leader?

A Yes.

Q Did he ever consult you or ask you to appoint anybody to the public defender's office. [159]

A No.

Q In your office, the public defender's office had you been giving your public defenders the ability to make broad determinations?

A Yes.

Q Had you been giving them the opportunity to make policy decisions?

A On individual cases, that is correct.

Q Do you feel that between you and your assistant public defenders, there must be a feeling of confidentiality?

A Absolutely.

Q Do you feel this would be a mainstay or a basic part of your office?

A Yes.

Q Do you feel that the relationship between you and your assistant public defenders is a confidential one?

A Certainly.

MR. SCHOENBERGER: Nothing further.

MR. WAGNER: I have nothing further, your Honor.

THE COURT: Thank you.* [20]

MR. GOODFRIEND: I never said that. If you want me to come back here Thursday afternoon or Thursday at 11 o'clock and if the Court directs me to be here, I am an attorney, I am an officer of this court and I will appear without subpoena.

MR. WAGNER: I would respectfully request that he be directed to remain and testify as long as he is here this afternoon.

THE COURT: I won't do that.

MR. FINKEL: May we fix a time

where we can have Mr. Goodfriend present?

THE COURT: Will you be here at 11 o'clock on Thursday, Mr. Goodfriend?

MR. GOODFRIEND: I prefer 2.

THE COURT: All right, 2:15 on Thrusday.

MR. GOODFRIEND: All right, sir, I will be here at 2:15 on Thursday.

MR. APOTHEKER: I would like to make clear to the Court that I would like the caption to be amended to so state exactly what the Court directed.

THE COURT: The caption will be amended so that the title of this case will be Aaron Frankel and Alan Tabakman, Plaintiffs, against Peter Branti as Public Defender, Rockland County, Defendant. [71]

Q Do you contribute to other political campaigns, Mr. Barone?

A I certainly do.

Q For example?

A I contributed to Mr. Jim Damiani's campaign this year.

Q He's a Democrat?

A He's a Democrat. I contributed to Mr. Ted Dusanenko's compaign.

Q He's a Republican?

A He's a Republican. And several others. I contribute to people I know and respect.

Q Without any coercion?

A No coercion.

Q If you didn't want to contribute to Mr. Goodfriend's campaign, did you have to?

A Absolutely not.

Q No one coerced you at any time?

A Absolutely not.

Q Mrs. Seigerman called you up and asked you whether you would like to contribute to Mr. Goodfriend's campaign?

A No, she didn't say that.

Q What did she say? [72]

A She said that Mr. Goodfriend had suggested that she make the call, and asked me if I would, and if I would ask those assistants whom I have just named if they would.

Q Any threat implied or expressed?

A Not one bit.

Q Mr. Barone, in your office as the public defender, you permitted your attorneys to practice?

A yes.

Q Was that a change from the prior administration?

A No.

Q They were always, even under Mr. Becker, permitted to practice?

A Yes. The reason being that it is a part-time office, Mr. Apotheker.

Q Did you ever have occasion to counsel Mr. Finkel on conflicts between his practice and his duties as assistant public defender?

A Yes, I counseled all my assistants, not only Mr. Finkel, as to possible conflicts.

Q Did you ever have to criticize Mr. Finkel for any possible conflicts he might have had?

A No. *

[77]

MR. APOTHEKER: I have no further questions at this time subject to recall.

REDIRECT EXAMINATION

BY MR. FINKEL:

Q Mr. Barone, did you hope at some time to be retained in office as Public Defender by the new Rockland County Legislature prior to the time you learned of its control by Democrats?

A Yes, I had assumed that if the election were to bring us a Republican legislature that I probably would be reappointed.

Q Did you think it would hurt your effort by contributing to the campaigns of various legislators?

A I contributed to their campaigns because they were friends of mine and because I respected them not for any other reason.

Q You didn't think that it would hurt?

A Quite honestly I didn't think it would help either.

Q When were you admitted to practice law in the State of New York?

A 1951.

MR. APOTHEKER: We have been through that and we have covered Mr. Barone's competency. [83]

H A R R I E T C O R N E L L, called as a witness, having been duly sworn, testified as follows:

MR. WAGNER: Do you have any objection if Mr. Burke sits in the jury box?

THE COURT: No.

MR. WAGNER: I have no objection.

MR. BURKE: I don't know if the record has reflected an appearance. I just appear to represent the witness, for that limited purpose, your Honor.

THE COURT: You have no standing so far as this lawsuit is concerned but you may sit there.

MR. BURKE: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. WAGNER:

Q Mrs. Cornell, do you presently hold any official political position in Rockland County?

A Yes, I do.

Q What is that position?

A Chairman of the Rockland County Democratic Committee.

Q For how long have you held that position?

A Since approximately June, 1972.

* [86]

Q Who presided at this meeting?

A I did.

Q Besides yourself and the members of the legislature who were present can you tell us who else was present?

A We had several such meetings. Generally speaking the legislators were present and the town chairmen were invited to attend and I was present.

Q The meeting that I am concerning myself with at this point is the meeting at which Mr. Peter Branti was designated to be the next Public Defender.

A I can't quite remember whether all of the town chairmen were present. I know that one town chairman had been ill for a couple of meetings. One was not able to attend for a vacation. It would be hard for me to specifically remember.

Q But, in other words, most of the legislators and some of the town chairman were present along with yourself?

A Yes.

THE COURT: How many town chairman are there?

THE WITNESS: There are five towns, five town chairmen.

Q Was the press present at the meeting?

A No. [88]

Q You say there were several meetings. Was there more than one meeting at which the appointment of the public defender was discussed, to your recollection?

A No. I don't think so.

Q I am confining my questions now then specifically to that meeting at which Mr. Branti's appointment was discussed, whenever it may have taken place. I don't think the time is of that much importance. It was sometime in the early part of December, was it not?

A Sometime in December.

Q At this meeting can you tell us who was proposed for public defender other than Mr. Branti, if anyone?

A I don't think anyone else was proposed by any of the legislators.

Q Do you recall who proposed Mr. Branti's name?

A I don't remember. I can only guess that it was one of the legislators from his own township.

Q What town is that?

A The Town of Haverstraw.

Q That would be then Mr. Rotella and Mr. Grant which are legislators from that town?

A Yes, that is correct. [93]

Q At the time of his nomination was there any discussion of assistant public defenders, the people that he would appoint to work under him?

A As to who he would appoint?

Q Yes.

A No, sir.

Q Was there any discussion as to the procedure by which he would appoint them?

A The only discussion that took place that night had to do with how recommendations would go to Mr. Branti from the Democratic caucus. [94]

Q How was it agreed that that would be done?

A It was agreed that it would be done by -- I may have to backtrack a little bit. Basically, it was agreed that the different town delegations would agree among themselves that evening, if possible,

how many numbers of recommendations they were permitted to make to both the County attorney's office and to both the public defender's office.

Q To backtrack for a moment, I take it that all of the people present at this meeting were all Democrats?

A Yes.

Q As it was considered by the Democratic caucus, was there an agreement that Mr. Branti had the right to refuse to accept recommendations by the caucus?

A It was mentioned by several legislators present. The question was raised, basically, and a number of legislators indicated that if Mr. Branti turned down their request, which everybody had acknowledged that he not only had the right but the responsibility to do in order to have an efficient office, a number of the legislators asked, from the different towns, asked if they might have the option of submitting different names of whoever Mr. Branti might have turned down. [95]

Q If a certain legislator proposed an individual was declined by Mr. Branti,

then that same legislator would have the right to propose another name?

A It wasn't so much that an individual legislator might. Basically, these recommendations were coming from the Town delegations. In a town that had six legislators presumably if recommendations from that town had been turned down by Mr. Branti, presumably those legislators would have an opportunity to meet again and discuss other names and then resubmit a name or names to Branti for his selection.

Q It was more or less agreed by the caucus that each Town delegation would have a certain amount of input both in the County attorney's and the public defender's office, is that correct?

A Yes, that's correct.

Q Each Township would get its share?

MR. APOTHEKER: Your Honor, I am going to object to that question.

THE COURT: Overruled. Do you understand that question?

A Would you put it to me, again?

Q I am talking now because you mentioned that assistant County attorneys

and assistant public defenders were treated, [96]
in essense, as a package, is that correct?

A We weren't talking especially about the public defender's office.

THE COURT: I cannot hear her answer if you start asking the next question.

MR. WAGNER: I am sorry.

THE COURT: Would you repeat the question before the witness.

(Testimony read.)

A We were not talking simply about the public defender's assistants or recommendations to that office. We were talking about attorneys for both the County attorney's office and the public defender's office. We knew that there were together in both offices that there were fourteen assistants, part-time assistants, that they were talking about. The towns wanted to make recommendations for these assistants and basically, the discussion that night was how should the recommendations come; how many recommendations should be permitted from each town.

Q To the best of your knowledge, were the names of any specific appointees discussed that night other than Mr. Branti himself?

A I do not think that the names for any of the assistants were discussed that [97]
evening.

Q Did there come a subsequent meeting when the various Town delegations did in fact submit names for consideration for the positions of assistant public defender?

A Yes.

Q That meeting, I assume, took place after the one in which Mr. Branti was appointed?

A Yes.

Q Did you also preside at that meeting?

A Yes.

Q Did that meeting, to the best of your recollection, take place some time around December 22nd or 23rd?

A Somewhere around that date. I would have guessed earlier in the week.

Q Were the same parties present as you mentioned as being present at the previous caucus?

A My recollection is about the same for all of these meetings, they had most of the legislators and some of the Town chairs.

Q This meeting was limited to Democratic personnel?

A Yes. [98]

Q Was Mr. Branti present at this meeting?

A No.

Q Did you again chair this meeting?

A Yes. I chaired it and I think Sam Coleman, who was to be the chairman of the legislature, he was there. They weren't always so very orderly and it wasn't like a formal kind of a meeting.

Q Were you chairing the meeting or in essence attempting to chair the meeting at the time that nominations were put in for assistant public defenders?

A Yes, I think probably.

Q Were names for assistant public defenders and names for assistant County attorneys considered together?

A Yes.

Q Could you tell us, if you would, please, how the names were put into consideration?

A The different Town delegations really proceeded to nominate people or to give their recommendations for these positions.

Q You say Mr. Branti was not present at this meeting?

A No, he wasn't.

Q Do you have any knowledge as to whether or not Mr. Branti had been presented with a list of these people for his approval prior to their submission? [99]

A Do I know whether he had?

Q Yes.

A No, I don't know whether he had.

Q Do you recall the names that were put forth that night for assistant public defender?

A Yes.

Q Was the name John Allison submitted?

A Yes.

Q Do you recall by what Town delegation?

A The Clarkstown delegation.

Q John Costa, by whom was he submitted?

THE COURT: Let's find out if he was submitted.

Q Was the name of John Costa submitted?

A Submitted for what, sir?

Q Submitted for the position of deputy public defender or assistant public defender?

A No.

Q John McAlevey, was his name submitted?

A Yes.

MR. APOTHEKER: I think Mrs. Cornell has characterized it as a recommendation. I think that word should be used. [100]

THE COURT: I read submission as meaning recommendation. I suggest you use recommended hereafter.

MR. WAGNER: Yes, your Honor.

Q Mr. McAlevey by the Ramapo delegation?

A I don't think I said, but he was.

Q Mrs. Cornell, were each of these recommendations made by the chairman of the delegation or were some made by individual members?

A Each Town delegation did have a chairman. The different Town delegations did not have chairmen of their delegations. They presumably had discussions among themselves prior to coming to the caucus.

Q Did one member of the Town delegation act as a spokesman for the Town delegation or did it vary according to the delegation?

MR. APOTHEKER: I object to that question. I don't see the relevance of that at all.

THE COURT: Overruled.

A I am not sure if I remember that or not.

Q Mr. William Nelson, was his name recommended?

A Yes.

Q By which delegation, do you recall?

A Clarkstown. [101]

Q Manuel Sanchez, was he recommended?

A No. I don't believe so.

Q Wayne Feinberg, was he recommended?

A Yes, he was recommended.

Q By what delegation, do you recall?

A Stony Point, I believe.

Q You know who recommended him because that is a one-man delegation, right?

A Right.

Q Mr. John McCabe, was he recommended?

A Yes.

Q By what delegation was he recommended?

A Also by Stony Point.

Q Was Gerald Blumenfeld recommended?

A Yes.

Q By what delegation?

A He was recommended by me.

Q How long have you known Mr. Blumenfeld?

A Approximately four years.

Q Did you have any discussions with Mr. Branti or anyone else prior to your recommendation of him?

A I did not have any discussion with Mr. Branti.

Q Did you have any discussions with anyone before you made your recommendation? [102]

A I had indicated to certain of the legislators, I think--let me think for a minute.

(Pause)

A (Continuing) I think I had indicated to some of the legislators that I was going to recommend his name. [103]

Q There must have come a time in your mind when you yourself decided that he was worthy of being proposed as an Assistant Public Defender?

A The caucus before was when the discussion took place, if I remember correctly, about Mr. Blumenfeld.

Q What discussion took place at that time concerning Mr. Blumenfeld?

A We discussed the fact that there

had been -- basically the different towns were going to make recommendations. You recall that I discussed that with you.

Q Right.

A At that point before we really got into deciding how the different towns would make their recommendations or how many recommendations they would be able to make I asked because I wanted to nominate Mr. Blumenfeld's name as being someone that I recommended very highly and I wanted it looked upon as not coming from any particular town.

Q This is what you might call a county chairman's prerogative?

A The county chairman in Rockland doesn't have any prerogative.

Q Courtesy?

A No, it wasn't even that.

THE COURT: I would appreciate it, Mr. Wagner, if you let her finish her answer. [104]

MR. WAGNER: I apologize.

A No. It wasn't a courtesy at all. I was really submitting his name because I felt that he had been the law chairman for the County Democratic Committee; he was very diligent, hard working; besides being a

lawyer he was a CPA. I thought he was well qualified and I was submitting him to the whole caucus for their approval, but I felt that he couldn't really -- I was dubious as to whether he would be recommended by a particular township. What I wanted was for the caucus to agree that perhaps he could be one of the recommendations that the caucus would submit to Mr. Branti and after that they could submit other recommendations on a town basis.

Q You said that you were afraid that his name might not be submitted by one of the town delegations?

A Yes.

Q If his name had not been submitted by one of the town delegations then, I assume, that he would not have had a chance to get that nomination.

MR. APOTHEKER: I object.

THE COURT: Overruled.

A Repeat that, please.

(Question read.) [105]

A He might not have been recommended. He might not then have been recommended by one of the town delegations.

Q My question was if a person was not recommended by a town delegation then that person was not in the running for an appointment, is that correct?

A That would not be correct. I am sure he would have been free to submit his application directly to Mr. Branti.

Q Are you familiar, Mrs. Cornell, in a general way with the duties of an Assistant Public Defender?

A I am a little bit now.

Q Were you at the time that you decided to submit Mr. Blumenfeld's name?

A I think so.

Q What was your understanding of the duties of an Assistant Public Defender or was your understanding of those duties at the time you decided to propose Mr. Blumenfeld?

A I knew that the Assistant Public Defenders often had to go to Justice Court in the evenings. A great deal of it was evening work.* [111]

Q Once the various --

THE COURT: Did you mean that question the way you asked it?

(Question read)

THE COURT: You meant to exclude Mr. Finkel?

MR. WAGNER: No, at the time this took place Mr. Finkel was still on the job. His replacement was not to take place until January, '78. I will limit my question.

Q Was there a discussion of any of the other incumbent Assistant Public Defenders, whether they should be kept on?

A No, I don't believe there was any discussion.

Q Mrs. Cornell, after the names had been recommended to the caucus as a whole did the caucus then vote on the names?

A No.

Q What then was the next procedure to bring about the official appointment of these people, the submission of the names to Mr. Branti?

A Yes, for his approval.

Q And who was charged with submitting the names to Mr. Branti, was that yourself? [112]

A I did, yes.

Q Did you subsequently have a meeting with Mr. Branti?

A No, I did not.

Q How did Mr. Branti obtain the recommendations of the caucus from you?

A I called him on the telephone.

Q You read him the names?

A Yes, I told him that there were certain names that were being recommended. He had already told me in a prior telephone conversation the day that I told him that he was being named Public Defender that he had the right to make final decisions and if anybody was unsatisfactory or not -- that he didn't feel could do the work in his office that he would not accept that and that was fully understood and completely acceptable. But I gave him or told him those names that I did have of people who were being recommended by the caucus.

Q Did he have any comment with regard to any of the names?

A He did have a couple of comments, yes. He did have a couple of comments.

* [117]

Q Would you consider yourself an expert on Rockland County politics?

MR. APOTHEKER: I don't think anybody can be considered an expert on Rockland County politics. I don't think there are such qualifications.

THE COURT: That may be. Maybe Ms. Cornell can give an opinion.

A People active in Rockland County politics know that it is an unusual, perhaps a somewhat unusual situation. Many other counties don't understand this, many other places. Because of the type of government we have with a legislature and no county executive and the legislators elected on a townwide basis the town Democratic Committees function as rather autonomous groups. The County Democratic Committee serves in a sense kind of an in a way mediating or chairing a position. It is quite unlike that of other political bodies or other counties. [118]

Q You have grown in this system since 1960 to the point where you are now the highest Democratic County official in the County, is that correct?

A Well, I had done all sorts of political activities in those first few

years that were not very -- that were not leadership activities.

Q I repeat my original question. Would you consider yourself to be an expert in Rockland County politics?

A Well, I am not sure I consider myself an expert at anything but I guess I probably know quite a bit about it.

Q Would you, based upon your long experience in Rockland County politics, would you characterize the appointments of the assistant public defenders as political appointments, political patronage?

A From the standpoint of the caucus and the political party there were numerous positions that were vacant and we felt that we certainly ought to have the ability to make recommendations and have input for these positions and that was the spirit in which these recommendations were made.

* [120]

Do. I understand that after the Democratic caucus had decided that Mr. Branti would be the public defender that you notified him of that choice?

THE WITNESS: Yes, I did, the next day.

THE COURT: Was it at that time or was there at that time a discussion of the appointment of assistant public defenders?

THE WITNESS: Yes, there was.

THE COURT: Would you tell me what that complete conversation was? I wanted the complete conversation, in substance, that you had with Mr. Branti immediately after the Democratic caucus had decided that he was to be public defender.

THE WITNESS: I called him the next day basically to inform him that he had been so selected and to congratulate him and we had -- he was very pleased about that. I then brought to his attention the fact, which I am sure he didn't need me to bring it to his attention, but since he had been an assistant district attorney I wanted to call to his attention specifically the fact that there were certain cases that he might be able to legitimately and properly handle as public defender and that I thought for his benefit he should look very carefully into that area to be sure that he knew what his [121] office could handle and could not handle in terms of cases that had been in the dis-

trict attorney's office. He said that he certainly would because he wanted everything to be proper as he took office as public defender.

He then said to me that he wanted me to understand that he felt that he had to make the decisions as to who would be appropriate in his office and who would have the right qualifications and he would be happy to accept recommendations from the Democratic caucus but so long as I understand that. And I said I certainly did and that there was no question otherwise, that we expected him to exercise that right of his and responsibility.

THE COURT: Did you have any discussion of how the recommendations would be channeled to him?

THE WITNESS: Well, I don't really remember. I may have told him that there would be further discussions at the next Democratic caucus and that I would be in touch with him.

THE COURT: Did you have any discussion with respect to the Democratic caucus or you as County chairman have any sort of corresponding veto over his choices? [122]

THE WITNESS: Did we have any such discussion?

THE COURT: Yes.

THE WITNESS: There was no such discussion and there was no question of that after he indicated to me that he felt that he had to have the final decision. I agreed with him.

THE COURT: Did he tell you that he had chosen some people already and that there were X or X minus 1 or any number of positions that were presently available?

THE WITNESS: No, I don't think he said anything about that and I don't think we discussed any individual names.

THE COURT: Thank you.

CROSS-EXAMINATION

BY MR. APOTHEKER:

Q You have gone into detail about the conversation you had with Mr. Branti, Mrs. Cornell. Am I right in assuming that you at no time told him he would have to appoint any of the individuals that you recommended from the Democratic caucus?

A No, sir, I never told him that.

Q Do you know either of the plain-

tiffs, Alan Tabakman or Aaron Finkel?

A No, I don't. [126]

*

Q Do you know the term of the office of the public defender, his term of office?

A Yes.

Q What is it?

A Six years.

Q The people that he appoints as his assistants, how long do they serve?

A It was my understanding they serve at the public defender's will and pleasure.

Q You were aware, were you not, at the end of Mr. Barone's term the positions in his office would be vacant, is that correct?

MR. WAGNER: Objection, your Honor. I believe that is what this whole lawsuit is about.

THE COURT: He is asking for her understanding of the situation.

MR. WAGNER: Then I withdraw my objection.

A That was my impression, yes.

Q You felt you were not necessarily replacing anyone -- not you were replacing anyone -- but Mr. Branti was not necessarily replacing someone but were making recommendations

to appoint new people to vacant positions, is that correct? [127]

A Yes. That was my impression.

Q How long have you known Gerald Blumenfeld?

A About four years, I think.

Q Have you known him to be a competent and qualified attorney at bar?

A Yes.

Q Have you ever had any question about his ethics or moral character?

A No.

Q Did you see him as absolutely qualified to be an assistant public defender?

MR. WAGNER: Objection. The witness said she was only generally familiar with the duties of a public defender.

THE COURT: This answer is called for within the framework of her previous testimony.

(Question read)

A yes, I did.

Q Was your testimony that you didn't nominate or any one of the democratic caucus did not nominate, but they recommended, is that correct?

A Mr. Branti?

Q Yes.

A Yes. That's correct. [128]

Q Did you know Aaron Finkel's party registration? Did you know during the time from November to January of 1977 of Mr. Finkel's registration?

A No.

THE COURT: She said she didn't know Mr. Finkel. I take it that means you didn't know his party registration?

THE WITNESS: I don't think I did, your Honor. I am still not sure I know what it is.

Q Was Mr. Finkel ever discussed by the democratic caucus?

A No. I don't believe so.

Q Did you say that Mr. Finkel would have to go?

A No. Mr. Finkel was never discussed at any caucus, as far as I know.

Q What about Mr. Tabakman? Did anyone say at any caucus including yourself that Mr. Tabakman could not be reappointed?

A No.

Q Was his name discussed?

A No.

Q Did any democratic legislator or town chairman ever ask you about Mr. Tabakman and whether he could maintain his position? [129]

A No.

Q Did Legislator Dusanenko ever call you on behalf of Mr. Tabakman?

A No.

Q Did a non-democrat ever call you to see if they could be appointed as an assistant public defender, to the best of your knowledge?

A yes.

Q Who was that?

A Mr. Barone.

Q Mr. Branti was never at a caucus; is that right?

A That's right.

MR. APOTHEKER: May I have a moment, your Honor?

(Pause)

MR. APOTHEKER: I have no further questions at this time.

MR. WAGNER: I have no further questions.

THE COURT: I have a few more.

*

[133]

*

Q Do you mean as a candidate or as an endorsement?

A As a candidate.

MR. APOTHEKER: Up until now I haven't objected that much. I fail to see the relevance of Mr. Barone who is not a party to this action and what relevance any conversations either the caucus or Mrs. Cornell had about Mr. Barone.

THE COURT: You really see no relevance at all to that?

MR. APOTHEKER: No.

THE COURT: I do so I will overrule your objection.

BY THE COURT:

Q Was there any discussion at the time you passed a long his application of the fact that he was a republican and hence not eligible?

A No, sir.

THE COURT: Are there any further questions? Mr. Apotheker?

MR. APOTHEKER: No. [153]

Q Was it, to your recollection, was it not common knowledge among Democratic circles that Mr. McAlevey had made it a point that he was going to maintain Mr. Barone on as an Assistant Public Defender if he did get the nomination?

A That is possible, yes.

Q Didn't you in fact tell him that one of the reasons that his attempt to get the nomination of Public Defender was in trouble was because of his insistence on appointing Mr. Barone?

A I said that in my opinion one of the problems and I stated this before, the first priority that the Ramapo legislators had was to select a chairman from Ramapo. The other problem was the fact that he may have had a problem because of this so-called -- I was not part of any agreement or any deal or anything else that came up. It was knowledge that there may have been some kind of agreement that he would have kept Frank Barone on.

Q Mr. Gorman, were you present at a Democratic caucus at which the recommendation of Assistant Public Defenders was made some time in the latter part of December?

A As far as names were concerned?

Q Yes.

A I don't believe so. [154]

Q Were you at a Democratic caucus at which Mr. Peter Branti was designated Public Defender?

A Yes.

Q At that caucus were any names put forth as Assistant Public Defenders -- well, were any names put forward?

A I don't remember any names coming forward.

Q To the best of your recollection, at that caucus was any understanding arrived at as to how the Assistant Public Defenders would be chosen?

A To the best of my knowledge I remember that the Public Defender's position and also the County Attorney's position were treated as one. There was some sort of a setup there or an agreement they came to that X amount of attorneys, I will use the word attorneys, would come from each township. The only thing that I do remember is that there were a number of attorneys that were supposed to come from the town of Ramapo or recommended from the town of Ramapo.

Q Were you as the town chairman of the town of Ramapo advised as to the number of appointments that you have?

A I had no appointments.

Q The town would have, not you personally.

MR. APOTHEKER: I object to that question. I don't believe the town has any [155] appointments and there was not any testimony that they did.

THE COURT: I am not really sure what the question is at this point.

(Question read)

MR. WAGNER: By you I mean the town of Ramapo.

MR. APOTHEKER: Same objection.

THE COURT: I thought you said you had no objection.

MR. APOTHEKER: I thought I did say I had an objection because there has been no testimony that the town of Ramapo had any appointments.

THE COURT: I will sustain the objection.

Q Mr. Gorman, in the parceling out of the attorneys' jobs, i.e., Assistant County Attorney and Assistant Public Defender, were any number of these jobs alloted to the Ramapo delegation?

MR. APOTHEKER: I object to the use of the words parceling out and allotting to.

THE COURT: You want him to use recommended.

Q Allotted to Ramapo to recommend, I will put it that way.

A The legislators from Ramapo, to the best of my knowledge, it was suggested that they can or they should recommend at [156] least six attorneys.

Q And that was six altogether for both offices, Public Defender and County Attorney?

A Right.

Q Mr. Gorman, Mr. Frank Barone is a resident of the town of Ramapo, is that correct?

A I don't know.

Q Were you present at a caucus when the county chairman, HarrietCornell, brought up the name of Frank Barone as possibly being kept on in the Public Defender's office?

MR. APOTHEKER: Objection, your Honor, hearsay.

THE COURT: Overruled.

(Question read)

A I may have been there. I believe I might have been there.

Q And what was the reaction of the

delegation to that suggestion regarding Mr. Barone?

A They did not look upon Mr. Barone's actions, one who had criticized the District Attorney, as very good.

Q And Mr. Barone is a Republican, right?

A I don't believe that that question that he was a Republican ever entered into it.* [161]

*

Meehan-direct

Q Were you party to any conversations prior to that meeting at which it was determined that only the name Mr. Branti would be put in?

A There were some discussions. It is very difficult to recollect. I guess I would have to say — Could you repeat the question?

(The question was read back.)

A Yes.

Q Could you tell us what the gist of those conversations were; how it was determined that only Mr. Branti would be nominated and, therefore, appointed?

A I think it's important to consider the background. I would like to talk about that.

MR. WAGNER: I have no objection, if the Court has none.

A Rockland County is run by a part-

time legislature. I have a regular, full-time job, and most of the other members do, as well. Most unlike other counties, like Nassau and Suffolk; those appointments were made by the county executive. These appoitments are made by the full legislature, namely, eighteen people. Discussions have to take place. You have to have some type of an agreement on that.

I represent the Town of Ramapo. We have six legislators. They were all [162] Democrats. We are 6/11's, a majority of the eleven Democratic members. We were, naturally, interested in having significant influence in county government and to do this, there are a number of major posts that are appointed by the legislature. We were interested in gaining some of those positions. Naturally, it's a give and take process.

We were interested in gaining the chairmanship of the legislature. We were also interested in having the clerk to the legislature, who had previously been an appointment from Ramapo, re-appointed.

The other major position would be the county attorney and I can't think of anything too major after that.

Ramapo felt that they wanted the chairmanship and that they wanted the clerk to the legislature. Because of that, I think you would agree, that it would be fairly unfair for Ramapo to want anything more.

We also had an agreement among ourselves and the caucus that rather than just have a simple majority to make those determinations, that a majority of eight would be needed.

Q This was a majority of eight of the Democratic eleven? [163]

A Yes, exactly.

Q Was the Republican minority consulted in any way with regard to these appointments?

A I think it is usual -- I might add that I hold two degrees in Political Science. I think those of us involved in politics, as you, yourself, are, from being a candidate -- I don't remember the Republicans, when they controlled the legislature, calling in Democrats.

In the U.S. House, they have a caucus room for the Democrats and a caucus

room for the Republicans. It would be pretty rare to find a Republican in a Democratic caucus room, and a Democrat in a Republican caucus room.

THE COURT: I take it the answer to the question is no?

THE WITNESS: Yes, your Honor.

Q In other words, Mr. Meehan, when the Republicans had the power, they appointed their people; and when the Democrats took the power, they appointed theirs; is that correct?

A I would say generally speaking, four years ago, we had thepower; and there was a vacancy in the Department of Audit and Control, and we had four returning incumbent Demo- [164]
crats coming back, and they said the Republican incumbent to that position was excellent; and that was George Renc. We appointed him, although he was then and is now a registered Republican.

Q You mentioned that Mr. McAlevey, his name was also being considered, along with Mr. Branti, originally?

A I am saying that back in several months' time, that I had heard that Mr. McAlevey was interested in becoming the Public Defender of Rockland County. He was not discussed by the caucus.

Q Mr. McAlevey is from your own Town of Ramapo; is that correct?

A Yes. He is a former supervisor.

Q Did Mr. McAlevey ever approach you or any of the other Democrat legislators from Ramapo, and ask you to consider his name?

MR. APOTHEKER: I object to that question.

THE COURT: I will sustain the objection.

Q Do you know of your own knowledge --

THE COURT: The word is "Democratic."

MR. WAGNER: If that is the only objection --

MR. APOTHEKER: It's not my only objection. [168]

Q Subsequent to the appointment of Mr. Branti's designation by the Democratic caucus which was taken tantamount to the appointment, was there any discussion among the county legislators, the Democratic county legislators as to the method to be followed with regard to Mr. Branti's assistants, how they were to be chosen?

A Mr. Branti's assistants were to be chosen by Mr. Branti.

Q Were you present at a Democratic caucus at which certain names were submitted by various town delegations for Mr. Branti's consideration?

A Let me say I think that certain names were submitted for his consideration, but I don't know that it was done at a caucus, per se. It might have been done at a later date or by phone.

Q If you call it a caucus or a meeting, were you present when names of certain individuals were discussed as being recommended to Mr. Branti by the 11 Democratic legislators?

A I had heard in discussions with my own delegation, that is the six members from Ramapo, I do remember them suggesting some names to be recommended to the Public Defender for appointments. [173]

*

MR. WAGNER: No further questions, your Honor.

CROSS EXAMINATION

BY MR. APOTHEKER:

Q Could you for the court's edification briefly describe the governmental and political makeup of the County of Rockland as to the towns and how many people are elected from each town?

A Rockland County is composed of five towns of varying populations. In the late 1960s after the famous apportionment cases -- I guess the first one was Baker v. Clark -- a suit was brought and Rockland County was mandated to have a one man, one vote system. The County Board of Supervisors, one supervisor of each town at that time comprised the county government. They made a proposal for having a county document on a weighted voting system, is my recollection. That was ruled improper by the courts. I believe the Supreme Court actually determined Rockland County's apportionment. The method was to take the population of our smallest town, which is Stony Point, and divide that population into the population of the other four towns in the county. What came out was an 18-member legislature: Stony Point having one representative, Haverstraw two, [174]

Orangetown 2, Clarkstown five and Ramapo six. In 1969, people of Rockland County selected a Republican legislature; 14 Republicans and 4 Democrats. In 1973 there was another election and it flipped: 14 Democrats and 4 Republicans. In 1977 another election was held and at the same time an election was held a proposition was placed on the ballot because many of us felt there was a lack of continuity in county government and we felt there were problems with ballots crowding when you were asked to vote for 6 out of 13 people.

We thought we would adopt a staggered term system. At the time what was determined which passed as a referendum is that the three in my town who were the highest vote getters would get four terms and the next two years. I was elected to a four-year term. In other regards, I think it is very important to know although I consider it rather irrational myself that Rockland County has no chief executive. We have one hundred thirty three million dollar business. We have non-full-time running the store. I think most people would agree if you have a million

dollar store you have someone in charge of it full-time. That is not the case in Rockland County. It is run in my evenings and lunch hours and Sundays and Saturdays. [175]

MR. WAGNER: I have no particular objection to the witness' testimony if your Honor has none. I think it may be getting irrelevant.

THE COURT: I will hear it.

MR. WAGNER: I have no objection.

THE WITNESS: The chairman of the legislature for purposes of assigning federal grants and making contracts with private agencies is a chief executive officer. In reality, he is just another member of the legislature and he doesn't really make any important decisions on his own. He simply acts at the behest of the other members of the legislature. Of course, we have five towns and five supervisors and the politics of Rockland County are the politics of the various towns. Each town selects a certain number of legislators to run for office for that particular time. In my town, for instance, you can vote for any six. In Clarkstown you vote for any five.

It is a very, very decentralized situation. I read in the newspapers about places like Nassau County where the county chairman there has a salary of $50,000. Our county chairman has a salary of zero, makes no money and has almost no power. The public officials in Rockland County are never controlled by the party officials as might be the case in other jurisdictions in the country. [176]

Q Mr. Meehan, how much do you make as a part-time county legislator?

A $8,000.

Q The chairman?

A $11,000.

Q In order to have anything pass the legislature you need a majority vote?

A Yes.

Q In order for a contract to be executed by the chairman he needs powers to do that from the legislature itself?

A That's correct.

Q How do you view your responsibility as an elected official with regard to the recommendations to be made on governmental jobs?

A The overwhelming number of positions

in Rockland County are under Civil Service. It is a list system and people take tests, that type of thing. There are a number of discretionary positions like the Public Defender or County Attorney. I feel I have a responsibility as an elected official of part of the county to its largest town to select the best possible people for those positions. This is what I constantly try to do. I might say I feel it is very im- [177]
portant that they be qualified and the qualifications would probably be the primary thing. If a Public Defender does a poor job or if a County Attorney does a poor job or the Clerk to the legislature does a poor job or if the head of the department of audit and control or any other person I make a poor judgment on, it reflects on me. They scream to me. I get called at 7 o'clock Sunday morning or I get called late in the evening. I am responsible. [178]

Q And do you view that responsibility to theAssistant Public Defenders or Assistant County Attorneys and your input into those recommendations?

A If the County Attorney -- we can have the most brilliant County Attorney and if

he does not have good assistants it is going to be a poor office because the majority of the work will be done by assistants. I think it is important who the assistants are.

Q It is important for you as an elected official to have some influence into the recommendations to be made to that position?

A That is correct.

Q Mr. Meehan, I show you Plaintiffs' Exhibit 13, the legislative meeting transcript. Showing you Resolution 20 of 1078 authorizing the appointment of Assistant Public Defenders. Could you just read the resolve clause.

A "Resolved that the Public Defender be and is hereby authorized to appoint those Assistant Public Defenders as provided in the 1978 budget whose salaries shall be fixed in accordance with Resolution 162 of 1972 as amended and Resolution 895 of 1977."

Q I call your attention to the remarks made by Mr. Coleman, and I show them to you on the unnumbered page and ask you to review [179]
them for a second at the bottom of the page.

I don't know whether you were present at the time Mr. Coleman made that --

A Yes, I was.

Q Did you believe Mr. Coleman to mean by that statement that every single political appointment including those of the Assistant Public Defenders that were recommended by the Democratic caucus and I will vote for them or did you believe him to mean the major political appointments of the County Attorney and the Public Defender?

MR. WAGNER: Objection.

THE COURT: Sustained.

Q Do you know Mr. Aaron Finkel?

A Yes.

Q How well do you know him?

A Not very well.

Q Have you ever had a conversation with Mr. Finkel regarding his membership or affiliation with the Democratic Party in Rockland County?

A No.

Q Did you ever ask him to join the Democratic Party in Rockland County? [180]

A No.

Q Contribute money to the Democratic Party in Rockland County?

A No.

Q Swear allegiance to the Democratic Party in Rockland County?

A No.

Q Do you know Mr. Tabakman?

A Is Mr. Tabakman the gentleman seated to the left of Mr. Wagner?

Q I take it you don't know him. He is the gentleman seated to the left of Mr. Wagner.

A As a public official I literally meet thousands of people and I may have shaken Mr. Tabakman's hand on one or two occasions. I don't remember seeing Mr. Tabakman.

Q Mr. Meehan, there was a meeting in executive session, I believe, on January 1, 1978, New Year's day and I believe, or tell me if I am correct, that it was the new legislators that were going to be sworn in on January 3rd that had that meeting?

A Yes. In fact, I think the law said that they were automatically legislators and they had all been sworn in prior to that. It was not only an executive meeting it was also [181] a public meeting. In other words, we voted

ourselves into executive session and then we voted ourselves out of it and passes resolutions. We can't pass resolutions in executive session.

Q Did you have occasion to speak to any of the Republican minority members of the legislature at that time?

A On that day, yes, after the meeting.

Q Could you tell us who you had a discussion with and what was the discussion about?

A Yes. Mr. Coleman, as the chairman, and myself as majority leader, were asked to have a conversation with Mr. Dusanenko and Mr. Murphy and Mr. Bernstein.

Q All Republican members?

A That is correct, yes. In the discussion they were concerned about a number of things. They felt that although the seven Republican members weren't the majority, they were certainly a significant part and they felt that they should be able to take part in appointments that the legislature was going to make and that there should be Republican appointees and that we should share the appointing with the Repub-

licans and they were also specifically concerned about Mr. Finkel and Mr. Tabakman, and also about the future, what would be the posture of the Democratic majority in the future. [182]

Q What other conversations took place along that vein?

A Well, we had responsibility for about ten minutes but I think that the crux of the situation was that they said that -- expecially Mr. Murphy and Mr. Dusanenko, they had been a colleague of Mr. Coleman for four years and that they did not want to vote against his nomination and at the meeting on the 3rd they were prepared to vote for his nomination I think if we were willing to possibly say that Mr. Tabakman and Mr. Finkel could stay in the Public Defender's office or if there was a commitment on behalf of the Democratic majority that they would -- that the Republicans would be able to share in the appointing at least in proportion to the number of the legislature. They asked us to go back to the other Democratic members and propose that to them and I said -- Mr. Coleman and I both said we would do that. I said that I felt that in

regard to Mr. Finkel and Mr. Tabakman that Mr. Branti had already made his selections as to who would be appointed Assistant Public Defenders but that we would bring the message back and we agreed that they were a significant portion of the legislature and -- as far as nonpolitical, nonconfidential type of appointments that they should share in this. And they wanted some [183]
type of commitment by January 3rd which was our organizational meeting and I said it was snowing like mad that day and we were not prepared to have a meeting of the Democrats that evening nor were we going to have a meeting the following day nor were we going to have a meeting Tuesday so I could not make any type of commitment like that prior to the meeting Tuesday, January 3rd. [184]

Q Did you ever respond to the offer of the Republican offer on the evening of January 3? Was there a response to the offer?

A Well, on the meeting of January 3 - - Let me explain how the legislature works, and this is important. In order for us to appoint a Public Defender, there must be a recommendation by the appropriate committee

of the legislature. In this case, that is the multi-services committee of the legislature. If that does not take place, then a member must ask for a waiver of the rules of the legislature.

And in order for there to be a waiver of the rules for going to committee, you have to have twelve votes. We Democrats only had eleven, so that I was going to ask then or ask the Republicans to go along with the waiver of the rules on Mr. Branti's appointment. If this was not possible, then we would have to have a special meeting of the multi-services committee that evening and we had had a short executive session prior to the meeting of the legislature, and then the Republicans asked to have a brief meeting of the seven Republicans. And I asked them, "Would you go along with voting for a waiver of the rules on Mr. Branti, or will you go along" -- I don't know if I said "waiver of the rules," but, "Will you go [185]
along with Branti, so we don't have to stop the legislature in midstream and have a meeting of the multi-services committee?"

They said that they would not. And so, we did have to have that brief meeting of the multi-services committee, so that Mr. Branti could be designated by the multi-services committee and the chairman of the multi-services committee could report to the chairman that he had been appointed and nominated.

Q Was there ever a response to the minority's offer on January 1st?

A I think it's more like a request; yes. There really has not, because we haven't, since that time, met; although we did call one meeting. We didn't have enough Democrats to get a full discussion of that particular issue. But I have promised them that I would and I will bring that up when I have all my eleven Democrats in one place.

MR. APOTHEKER: No further questions, your Honor.

* [270]

Mr. Goodfriend was a Democratic legislator and I think there is something here that may be improper, to call in a previous Republican legislator to perhaps impeach one of their own witnesses, a previous democratic legislator.

It is the tenure of that aspect of this course of the trial which I find disturbing.

THE COURT: Well, you will have an opportunity to cross-examine Mr. Mascola, and I don't know at this point what Mr. Mascola, is going to testify to, but you will have an opportunity to cross-examine him.

While Mr. Goodfriend testified, was called as a witness by the plaintiffs, I don't think there is any question but that he was not a friendly witness. You heard his testimony. I would say he was not a friendly witness, and I certainly am not going to regard the plaintiffs as being bound by his testimony. So if this is an objection to the examination of Mr. Mascola it is overruled. If you are attempting to bring to my attention a possible bias or prejudice on the part of Mr. Mascola, why, that is something you can develop on cross-examination.

* [273]

Q Did there come a time when you specifically requested Mr. Goodfriend to do

whatever he could to keep Mr. Tabakman and Mr. Sanchez in that office?

A I asked Mr. Goodfriend to do what he could do to keep Mr. Tabakman and Mr. Sanchez in office.

Q And what response did you receive from Mr. Goodfriend to that request?

A He agreed that these people were competent, they were qualified, they were experienced, and that they should be kept in office, but he said he thought it would be extremely difficult, he didn't know that he could do anything at this time. He implied that the die was cast or something.

THE COURT: Did he say that the die was cast?

THE WITNESS: Sir, I don't remember exactly. Die was cast, or whatever was done was complete. It was extremely difficult for him to move, but he would look into it.

Q Did he make any other suggestions with regard to any other avenues you might pursue? [274]

A Yes. He suggested that I contact a James Damiani, who was a legislator from Clarkstown. Both Mr. Tabakman and Mr.

Sanchez are residents of Clarkstown.

Q Did he say to you that that was the reason you should contact the Clarkstown representative?

A He said that he felt that Mr. Damiani probably could do more for these two assistant public defenders because they were in his area, and that he had some sort of, at least the Ramapo group and the Clarkstown group had some sort of a quota or they could sponsor certain people. [275]

Q Mr. Mascola, did Mr. Goodfriend say anything to you at that time regarding any conflict between Mr. Tabakman and his law partner, Judge Wray, that he could not service because of that reason?

A In the course of the conversation I mentioned that Mr. Sanchez was not in any way affilitated with any particular party. He was not a Republican or Demcorat. He was an Independent.

I also mentioned that Mr. Sanchez had volunteered his services for a period of six months in order to learn and go through, I guess, an apprenticeship program and that he should be given consideration as well as Mr. Tabakman.

He said, well, possibly something could be done for Sanchez, but they couldn't do very much for Tabakman because he was an active Republican; not only was he a member of the Republican Party, but he was active in the past campaign.

Q Did Mr. Goodfriend say anything to you with regard to there being any impropriety in a judge's partner serving as an Assistant Public Defender?

A I don't recall that as part of the conversation.

Q Did there come a time -- I'm sorry, strike that.

After your conversation with Mr. Goodfriend, did you in fact consult with [276] Mr. Damiani?

A Yes, I did.

Q Could you tell us, did you meet with him personally or was this a telephone conversation?

A I did not meet with him personally. It was a telephone conversation.

Q Would you tell us what the gist of this conversation was, please?

A Again, I requested or asked assistance from Mr. Damiani in behalf of Mr. Tabakman and Mr. Sanchez; asked if he would help these people keep the jobs that they had for the past couple of years, and Jim Damiani said he had already made his two appointments. Evidently he was allotted two appointments and he had made these appointments and it would be extremely difficult at this time to consider reappointing Mr. Tabakman and Mr. Sanchez.

Q Did Mr. Damiani say anything to you concerning any impropriety in Mr. Tabakman as a partner of the town justice serving as Assistant Public Defender?

A This was not part of our conversation.

Q After you spoke to Mr. Damiani, did you speak to or meet with anyone else whom you felt might be in a position to help Mr. Tabakman and Mr. Sanchez?

A Yes, I had an opportunity to meet personally with Marilyn Troy. Marilyn Troy [277] is the chairman of the Clarkstown Democratic Committee.

Q Would you tell us the gist of your conversation with Marilyn Troy?

A I again asked Marilyn for some help. I believe that both men were deserving of her consideration. She recognized the problem. She knew Mr. Tabakman and evidently knew Mr. Sanchez. She knew that they had been working and doing a good job, and she thought that possibly they should be considered for reappointment.

As the discussion went on, she implied that she couldn't do very much for Mr. Tabakman because he was an active Republican, and I can remember her saying that he had been extremely active in a recent campaign, and that campaign was for the judgeship of Mr. Wray, and she said under this basis it would be difficult for her as a Demcoratic town chairman to assist someone that had worked openly and directly in this kind of a campaign.

As far as Mr. Sanchez was concerned, she thought that this man deserved an opportunity because of the time he put in as a volunteer and the fact that he had a couple of years, I'm not sure whether it is two or three years' experience, that he should be kept on.

I also believe that he was bilingual, et cetera. She said she would do [278]
what she could to help him because he was non-political and she asked that he send his resume to her office.

Q During the course of your discussion with Mrs. Troy, did she evidence to you the fact that she was aware of Mr. Sanchez's political affiliations, if any?

A I was the one that reminded her that he was not a Republican or Democrat.

Q Did she in response to that statement make any comment concerning whether that would make it more or less difficult for him?

A She said it would be a lot easier to do something for Mr. Sanchez because he was not politically affiliated with any group.

MR. WAGNER: Thank you, Mr. Mascola. No further questions, your Honor.

CROSS-EXAMINATION

BY MR. SCHOENBERGER:

Q Mr. Mascola, when were you elected to the Rockland County Legislature?

A 1969.

Q When did you assume the office of a legislator in the County of Rockland?

A January 1, 1970. [302]

J O H N M C C A B E, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WAGNER:

Q Mr. McCabe, do you currently hold any positions in government in Rockland County?

A Yes, I am assistant public defender and I am the Village Attorney in the Village of Haverstraw, New York.

Q When were you an assistant public defender?

A January 3, 1978.

Q When were you appointed Village Attorney for the Village of Haverstraw?

A At the organization meeting in 1975, I believe it would be April 1st.

Q You currently hold both those positions, isn't that correct?

A I have submitted to the Village

Board a resignation due to the fact of the circumstances of the appointment, I told them that I would be willing to assist them in the interim until a new Village Attorney is appointed.

Q When does the resignation become effective? [303]

A I talked to them the first Wednesday of January when we had an organization meeting. I am sorry, not an organization meeting, the first meeting subsequent to my appointment as public defender, the first board meeting.

Q Did you tender your resignation effective as of any particular date or are you still Village Attorney?

A I believe I technically am Village Attorney. I told them I would submit a resignation as soon as the board was prepared to appoint a replacement. [304]

Q Now, your resignation as Village Attorney, was it your idea to resign or was that requested of you by Mr. Branti as a condition precedent to your being appointed assistant public defender?

A I had decided, based on the

experience of other people I have seen who held two jobs at once, that it wasn't a good idea to hold both, and that when I initially talked to Mr. Branti about this I mentioned that I had this position, and would have to resign it.

Q Did Mr. Branti ask you to resign it?

A Subsequent to the appointment he asked me what the status was with reference to the Village and when I would be departing that job.

Q When you had a conversation with Mr. Branti concerning your appointment, and the fact that you already held a job with the Village of Haverstraw, did he advise you that you would be required to resign from your present job to take the assistant public defender's job?

A "Required" is a loaded word. I would say, disapproved of the holding of both positions and felt that, expressed to me the feeling that a public defender should not simultaneously work for a municipality and the County.

Q He gave you an opportunity to resign

your first job so you could be appointed to the second one, is that correct? [305]

A Are we talking about sequentially what had to be --

Q Withdraw the question.

He gave you an opportunity to resign as Village Attorney so that you could be appointed and hold the position of assistant public defender, is that correct?

A I had already said, that is what I was going to be doing.

Q Did he say to you, in effect, okay, as long as you are going to resign I will appoint you as assistant public defender?

MR. APOTHEKER: Your Honor, I have given the plaintiffs' attorney a little latitude in leading the witness but that is going a little far afield.

THE COURT: Overruled.

(Question read.)

Q Or words to that effect?

A I don't know that he ever said, expressly, used the phraseology mentioned. It was quite clear between us that I would have to leave the Village position in order

to be appointed a public defender.

Q But it was all right with Mr. Branti to appoint you as long as you were willing to leave the Village Attorney's job, is that correct? [306]

A Are you asking --

THE COURT: Isn't that what he just said?

MR. WAGNER: I'm not sure, your Honor.

THE COURT: Would you read the last answer, please.

(Record read.)

MR. WAGNER: I'm sorry, your Honor, he did answer the question. I will withdraw that subsequent question.

Q Mr. McCabe, you now have a private practice as well as having been appointed assistant public defender, is that correct?

A Yes, that is correct.

Q Can you tell us when you were admitted to practice in New York State?

A April 14, 1970.

Q Prior to January 3rd of 1978, when you were appointed assistant public defender, have you held any other, with the

exception of the Village Attorney, any other governmental jobs?

A No, other than, of course, the Army.

Q We will call that a government job.

A All right. [316]

*

Q Now you are working for the Public Defender's office. Do you see any connection between working for a law firm and working for the Public Defender's office?

MR. WAGNER: Objection, your Honor. I think that is very vague. I don't know that he means by connection.

THE COURT: Maybe the witness understands it.

A I would say that it is very analogous to a private firm, in the sense that your operations and your atmosphere are very similar. You have a relatively small group of individuals devoted to a common purpose, support personnel, and the atmosphere in the Public Defender's office I have found it quite similar to law firms for whom I have worked and with which I am familiar.

I find the relationships, for instance, between and among the attorneys in the office very similar in both situations.

It is different in that the Public Defender's office has a much, shall we say, larger social goal to accomplish than most of your private firms.

I think this is probably the single controlling motivational force in the Public Defender's office, this feeling for what you are doing there is extremely important to [317] your clients. I mean you are talking about, very generally, clients who have no other access to whatever society has to offer except you. You are talking about people, I mean, in private practice, if you make a mistake, there are certain financial consequences about which you will hear. In the Public Defender's office, if you make a mistake or you don't do the job properly, you could get a kid in jail, and his life will be marked, and I find the spirit in the Public Defender's office is not surprising under these circumstances a very tight, cohesive unit, very much of a, the word group is overused in this society, maybe perhaps team would be a better word, and

there is an analogy to private law firms, a very strong one I feel.

Q Feeling of trust among the partners and feeling of trust among the Public Defenders?

A Yes. I find it is very pronounced.

MR. APOTHEKER: No further questions.

MR. WAGNER: I have nothing further, your Honor.

THE COURT: Thank you.

I see that Mr. Blumenfeld is still in the courtroom. I would like to ask him to take the stand again. You are excused. [318]

(Witness excused.)

G E R A L D B L U M E N F E L D, recalled by the court.

THE CLERK: You are still under oath, Mr. Blumenfeld.

BY THE COURT:

Q Mr. Blumenfeld, would you tell me the circumstances under which you came to be appointed a Public Defender?

A Yes, your Honor.

I would say some time in the fall, Harriet Cornell called me on the telephone and asked me if I had any interest in any

positions which might become available, and I indicated to her that I had an interest and that, I guess I just was aware from reading the newspapers that there might be certain positions available, and I told her that I would like to think about it, and I would let her know whether I had a real interest, and I believe I called her the next day, and I told her I would have an interest, and she indicated that she would suggest my name for one of the positions that might become available, and I believe she did that.

Also, prior to that, I guess, I had had a conversation with Mr. Branti at one time, in which he indicated that he might seek the position or he was going to seek the posi- [319] tion of Public Defender, and we talked about it very briefly, and I indicated I might have some interest, and he expressed some interest, if I were to consider it. I suppose he had some knowledge of my background and he expressed an interest and said I should come by and talk to him about it, if it went any further, and I had spoken to Mr. Branti once or twice on the telephone, I think, in November or December, and just in

very general terms, and I think he indicated at one time that he wanted me, and then I just was advised, I don't even know how, that I was going to be considered or that he was considering me, and that I would be appointed as an Assistant Public Defender.

Q Did you tell Mr. Branti at any time of your conversation with Mrs. Cornell?

A I don't believe so.

Q Did he mention that to you at any time?

A I believe he may have indicated that she may have called him and said that Jerry Blumenfeld had an interest in the Public Defender's office, and probably, I believe she said, would you consider him as an appointee?

THE COURT: Mr. Wagner, do you have any further questions?

MR. WAGNER: Just one, your Honor. [320]

BY MR. WAGNER:

Q Do I understand your testimony, Mr. Blumenfeld, to be that the Democratic county chairman sought you for the position initially?

A I wouldn't really say that. She did call me and ask me if I had an interest

in the position.

Q She initiated the proceedings whereby you became Assistant Public Defender. You didn't go to her and say, "I want the job." She came to you and said, "Do you want the job?", is that correct, or "Are you interested?"

A No, I don't think so. She asked me if I had an interest in a position and I indicated I would.

MR. WAGNER: No further questions.

MR. APOTHEKER: Just one question, your Honor.

THE COURT: Yes.

BY MR. APOTHEKER:

Q Mr. Blumenfeld, are you a CPA, Certified Public Accountant?

A Yes, I am.

Q How long have you been?

A 15 years.

MR. APOTHEKER: No further questions.

THE COURT: Do you find that experience helps you as a Public Defender? [321]

THE WITNESS: Well, Mr. Branti

was aparently interested in it. He was aware that I was a Certified Public Accountant, and apparently he felt that it would be of assistance to him in budgets; he indicated I might be able to help him with that and then he raised a question of certain grants that might be available, and he felt that I might be of assistance in arranging or working on certain federal or state opportunities or grants that might be available, and he was rather interested in that fact, and also in the fact that I had been a village justice in West Haverstraw.

THE COURT: Thank you, Mr. Blumenfeld.

(Excused) [329]

MR. APOTHEKER: May I suggest something to your Honor? Would that cause a delay in the course of burdening this court, that if I can produce an affidavit from every single county legislator, or most of them, that they were not the source of the story, and that the remaining ones that I cannot produce such an affidavit for, that he is free to call, if we can limit it to that then I would be satisfied.

THE COURT: I don't think that's the only thing that is involved here. I am not going to limit the plaintiff here in the evidence that he offers. I think, as he says, that there has been no pre-trial here, and so what we have had is really, to some extent, discovery during the course of the trial.

Let me suggest this as a possible approach, gentlemen. In lieu of the procedure we have been following which is a parade of witnesses who have never been examined by the attorneys offering them, that we have a schedule of depositions which can be taken up in Rockland County, taken in fairly short order, and we suspend the trial for a few days until they are completed? Does that make any sense? Would that be more convenient for both sides?

MR. WAGNER: That's perfectly satisfactory to the plaintiffs, your Honor, I think that's an excellent idea. [330] We might be able to obviate the need to bring in some of these witnesses.

MR. APOTHEKER: No problem, your Honor.

MR. WAGNER: I assume the defense will make them available to us. [331]

THE COURT: Just one second.

I can see problems because I can see arguments coming up as to the propriety of questions. I think, Mr. Apotheker, you have gotten a general flavor of my willingness in this non-jury trial to take evidence. I will make the judgment later as to whether that evidence should be given any weight or not, and I can see that as a problem. If these depositions become hotly contested, then you will be trooping down here for rulings on the questions of evidence. I would suggest, if these depositions took place and if you made your objections on the record, and then the witnesses went on and answered, this might work very well.

I would also suggest in this situation that the witnesses were talking about are witnesses and not parties any more, and so the extent to which you can go, really, is to make your objection, not give a direction that the witness not answer.

MR. APOTHEKER: Your Honor, I believe Mr. Branti would like to address the Court.

DEFENDANT BRANTI: Your Honor, I am the defendant at this particular time. I would like to have an opportunity over the weekend to discuss this with my attorney before we decide on any course of action, if it would please the Court. [332]

MR. WAGNER: Your Honor, since we have no schedule scheduled this afternoon, do you think Mr. Branti's attorney can agree by late this afternoon?

THE COURT: Yes, I think this is the problem. Right now I've got Monday put aside for this case. Suppose we say that over the luncheon recess Mr. Branti discusses this with the County Attorney and we come back briefly to determine just what our future course is; is that satisfactory?

MR. APOTHEKER: Yes, your Honor.

THE COURT: All right. I think we better say that we will get together at 1:50 because I have a two o'clock matter.

MR. WAGNER: Very well, your Honor, 1:50. Thank you.

(Luncheon recess taken at 12:40 p.m.) [333]

AFTERNOON SESSION

2 P.M.

MR. APOTHEKER: If your Honor please, over lunch I had an opportunity to discuss that facet of the discussion earlier concerning the possibility of depositions. Your Honor, after thinking about this quite thoroughly, it is my impression that to have depositions in this case at this time will only make matters worse, as far as I am concerned. I don't want these witnesses to have to come down here, have to have depositions, have to have this and have to have that and turn this matter even into more of a political trial than it is already.

Mr. Wagner, let's sit down, tell me who you want, tell me who want to examine extensively, tell me who you want affidavits from regarding Mr. Seltzer, and let's finish this case. I am ready to proceed with this case. Let's finish it already.

MR. WAGNER: Mr. Apotheker, I believe most of the witnesses you referred to are county legislators. I will be willing to depose them at the county office building when they are there on county business. I will depose them in the evening so their

work schedule is not interrupted. I think we can probably save them from coming to New York by deposing thim in the evening up at the County office building. [334]

MR. APOTHEKER: Your Honor, frankly, if I thought that that would solve the problem of them coming down here the least bit of a minute, then I would agree. But, it is not. Me all know that Mr. Wagner wants to drag these people down here. We know that.

MR. WAGNER: I object to that, Mr. Apotheker. I don't want to drag anybody down here.

THE COURT: I think I would rather object to that too, Mr. Apotheker, since if you will remember we moved into their phase of the trial at my specific suggestion when I pointed out that I did not have enough facts to make a ruling here. So, we are in this phase because I, in effect, have required us to move into this phase. I am not trying to make a political trial out of this.

MR. APOTHEKER: I understand that, your Honor, and I have not accused the court

of so doing, believe me. What I feel is that your Honor has, as he said, ordered this trial to go into this particular phase. He wanted to hear testimony from county legislators, he wanted to hear testimony as to how Mr. Branti was appointed and how his assistants were appointed. You have had the opportunity to hear testimony from the Democratic chairperson of Rockland County, [335] from the town chairman of Ramapo, from three county legislators. If your Honor wants to hear more testimony from the county legislators, we will be happy to oblige them. I don't want to delay this thing any longer. Let's get through it.

THE COURT: My suggestion this morning was that if we proceeded by way of depositions, we would probably, for the most part, be able to dispense with the necessity of bringing a great many of people who will otherwise be called to testify down to testify. Now --

MR. APOTHEKER: I don't believe that to be so, sir.

THE COURT: If you don't and if you are not willing to proceed that way, we

will proceed the other way. It does seem to me that that would be a much more economical way to proceed so far as the time of everybody concerned.

MR. APOTHEKER: I wish I could agree, your Honor, but I can't.

* [348]

MR. WAGNER: At this time, the plaintiffs would like to call the Honorable Anne O'Sullivan to the stand.

A N N E O ' S U L L I V A N, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WAGNER:

Q Ms. O'Sullivan, do you hold any position in the Rockland County government?

A Yes, I am a legislator.

Q You were, as a matter of fact, elected to that position in the election of this November, 1977, isn't that correct?

A Yes, I was.

Q After your election, did there come a time when you had occasion to discuss or to be advised that there were certain appointments which were available to

be made to various County offices?

A Yes. * [357]

Q Did Mr. Damiani ever allude to you to the fact that he had received a resume from Mr. Tabakman or that he had been approached by Mr. Tabakman in a request that either he or yourself sponsor him?

A No.

Q Do I understand from your testimony that you yourself put in the name of William Nelson to continue in the Public Defender's office?

A Yes.

Q What was the basis for your recommending Mr. Nelson?

A There were many reasons. I had been approached by people who had worked in the Public Defender's office and been told that he had done an excellent job. He had served for a couple of years, at least as the deupty, to Mr. Barone, and he was a black man, and considering the fact that some of the Public Defender's cases deal with the minorities in Rockland County, I felt that all of those factors were very important in keeping him there.

Q You say that one of the factors you consider was the fact that he was experienced, having served under the prior or the then Public Defender whose term was about to expire? [358]

A Yes.

Q Did you not also feel that that experience was worthy of some consideration with regard to the possible reappointment of other Public Defenders?

A They never came under my consideration.

Q Ms. O'Sullivan, I show you Plaintiffs' Exhibit 7 in evidence and I call your attention to the second paragraph which states in essence, "The selections," referring to the selections of the Assistant Public Defenders, "were actually made by the Democratic caucus composed of the parties 11 county legislators."

Do you know Bob Seltzer who wrote this article?

A I spoke to him on the telephone. I don't know whether or not I ever met him.

Q Did you make that statement to Bob Seltzer?

A No, I did not.

Q Do you know who did?

A No, I do not. I would like to.

* [361]

Q You alluded to the fact Mr. Nelson, as a black, you felt, would be a value to the office of Public Defender because it deals with minorities?

A Yes.

Q Are you personally aware, yourself, of the political enrollment of the current nine Deputy Public Defender appointees?

A No, I am not.

Q Would you accept the fact, if I tell you, that there are eight Democrats and one black registered?

A I have no reason to doubt your word.

Q Wouldn't you feel that since I am sure there is sufficient number of Republicans and Independents and Liberals represented by the Public Defender's office, wouldn't you feel there should be some Republicans in there too?

A I don't know if I can editorialize, but it seems to me you are commenting on exactly what we are fighting about here. [362]

If we are not going to appoint people on the basis of their political

party, why would I consider whether they were Republicans, Liberals or anything else.

Q You are saying you didn't appoint people on the basis of their political party?

A That wasn't a primary consideration.

Q Was it a consideration?

A Not to me.

Q Did you yourself recommend any Republicans?

A I already stated who I recommended. There were only two recommendations.

Q Neither of them were Republicans?

A No.

MR. WAGNER: No further questions.

CROSS-EXAMINATION

BY MR. APOTHEKER:

Q Ms. O'Sullivan, did you at any time advise any of the plaintiffs, either Mr. Tabakman or Mr. Finkel, that they would have to join the Democratic Party, contribute money to the Democratic Party or swear allegience to the Democratic Party in order for them to be retained in their jobs?

A I could not have done that since I have never spoken to either gentleman.

*

Q Mr. Damiani, did there come a time subsequent to your election, when you had occasion to discuss the appointments available to the incoming legislature? [365]

A No, sir. I don't recall any such thing as being predetermined, whatever. I don't recall anything like that.

Q Well, you had served in county government, you had served as a county legislator for four years prior to your reelection this year, is that correct?

A That's right.

Q So you knew that there were certain positions in county government which were not Civil Service and were subject to appointment, is that correct?

A That's correct.

Q And among those positions were Assistant Public Defender and Assistant County Attorney, is that correct?

A No, not as I understand it. Actually the only two in that particular area would be the County Attorney and the Public Defender. Assistants are generally picked by the County Public Defender and the County Attorney.

Q Do I take it then, Mr. Damiani, it was your impression that the County Attorney and the Public Defender had the complete right to appoint anybody they wanted to as assistants?

A That's correct. * [367]

Q Is it your testimony, then, that you showed her a list of all the people who had asked you to recommend them?

MR. SCHOENBERGER: Objection, your Honor.

A No.

THE COURT: Objection overruled.

A I don't know as I presented the list but I believe that I spoke to her about them.

Q Then it is your testimony that you verbally advised her as to all of the attorneys who had come to you and requested your consideration for either of these two spots?

MR. SCHOENBERGER: Objection, your Honor. That has been testified to and now he's attempting to badger the witness.

THE COURT: Overruled.

(Question read)

A I believe it was discussed. [368]

Q Could you tell us approximately how many were on this list that you had?

A I would say in the area of six names.

Q Could you tell us, if you recall, what the six names were?

A You will have to give me a little time.

I think the names were Allison, Nelson, Costa, Bolton, Savad.

I think that was about it. I don't recall if there was another one, at this point. I can't recall.

Q Mr. Damiani, are you aware of the political affiliation of these five gentlemen you have mentioned?

A I have seen many of the men or some of the men in various political functions on either side.

Q Such as?

A I would say that Allison I believe at one time was a committeeman, many years ago, or some years ago.

Q In what party?

A Democratic Party.

Q Bill Nelson?

A Bill Nelson, I don't know what he is.

Q John Costa, do you know his registration?

A No, I don't. I never asked him that.

Q Mr. Bolton, is that Ed Bolton? [369]

A Ed Bolton, yes, sir. I don't know what he is either. I never asked him that.

Q And Paul Savad, do you know his registration?

A No, sir, I don't.

Q Were these the only five gentlemen who approached you and asked for your help in obtaining this position?

A No, I think there were others.

Q But you didn't discuss the others with Mrs. O'Sullivan?

A I may have. I don't recall.

Q In any event, these are the only five that you specifically recall discussing with Mrs. O'Sullivan?

A I think so.

Q By the way, Mr. Bolton, Ed Bolton, is he a law partner of Terrence Ryan, do you know?

A It is very possible. I think it was mentioned in his resume, that he was a law partner. I don't know which one I could attribute that to. I think the name Ryan was involved in one of the resumes. I don't know which one.

Q When did you discuss these names with Ms. O'Sullivan?

A At one of the caucuses. Which one I don't remember. [376]

Q Would it refresh your recollection if I were to tell you that it did take place before the appointments were made and that he discussed the possibility of your submitting his name to the Democratic caucus as a possible assistant public defender?

A No, it doesn't.

Q So then it is your testimony today that you have no recollection as to what the conversation was about?

A No, sir.

Q Did you have, to the best of your knowledge or recollection, any business or any other dealings with Mr. Tabakman?

A Not that I can recall.

Q Mr. Damiani, I show you Plaintiffs'

Exhibit 7 in evidence and I call your attention to Paragraph 2 thereof which reads, "The selections (referring to the selections for assistant public defender) were actually made by the Democratic caucus, composed of the party's 11 County legislators," and I ask you, did you make that statement -- I'm sorry, do you know Bob Seltzer, the writer for the Journal News?

A Yes, I do.

Q Did you make that statement to Bob Seltzer? [377]

A No, sir, I did not.

Q Do you know who did?

A No, sir, I do not.

MR. SCHOENBERGER: Once again, your Honor, if I may, for the record, my recollection is that was admitted in evidence only to show it appeared in a newspaper, not with reference to the truth or falsity of anything printed therein.

In certain respects I wish the Court would instruct Mr. Wagner that when he asks the witness with reference to that, that that be made clear.

By producing it and saying it

is in evidence, it carries a different connotation than what it actually was introduced into evidence as.

MR. WAGNER: There is no jury. The judge is aware of the purpose of the document. I'm not allowing --

THE COURT: I don't understand your objection.

MR. SCHOENBERGER: I'm saying, your Honor, when --

THE COURT: You mean every time that we have reference to that you want a statement put in the record as to the purpose for which that was admitted into evidence so that the witness will be informed. I will overrule the objection. [378]

MR. WAGNER: I believe the question was asked and answered by Mr. Damiani; he did not make the statement or know who did make it.

THE WITNESS: No, I do not and I do not know who could have made it.

Q Mr. Damiani, did you have occasion to discuss the testimony that you were going to give today with anyone from the County attorney's office before you came in today?

A I spoke with my attorney, yes.

Q Who is your attorney?

A Mr. Schoenberger.

Q Now, Mr. Damiani, are you aware of the fact that initially you were one of the defendants in this lawsuit?

A Yes, sir.

Q Did there come a time when you were advised by anyone from the County Attorney's office that you were no longer a defendant in this lawsuit, that Mr. Branti was the only defendant?

A I think that was mentioned, yes.

Q And subsequent to you being told you were no longer a defendant, you still continued to have discussions with Mr. [379] Schoenberger?

A I see the County attorneys every day in the week. I speak to them all the time, and in passing, this could have happened, and I could speak to them during the day, you know, when I see them. Am I supposed to not speak to the attorneys?

Q Mr. Damiani, did you have occasion in the last several days to sit down -- I'm not talking about passing someone in the

corridor or a passing allusion; I'm speaking about sitting down at a table or sitting down -- period -- with one of the assistant County attorneys and discussing the questions that might be asked of you and the answers you might be required to give?

A I believe that we spoke about what was transpiring at the trial.

Q And when was the last such conversation you had with your attorney, Mr. Schoenberger?

A I think it was Saturday or Sunday.

Q And at that time, Mr. Damiani, did you have occasion to review or look at any of the transcripts or minutes of the prior testimony which had been given?

A No, sir, it did not interest me.

Q Do you know whether Mr. Schoenberger, when he spoke to you, had that in front of [380] him?

MR. SCHOENBERGER: I'm going to object to this line of questioning, your Honor.

THE COURT: Overruled.

A No, I don't remember him having any papers in front of him.

Q He had no papers in front of him at all?

A I say I don't remember him having any papers in front of him. I wasn't in that proximity where I could see any papers in front of him. I was in an audience with people that were there.

Q Well, was Mr. Schoenberger sitting at a table with you?

A He was sitting -- there was a table, and we were sitting around the area, yes.

Q Was he sitting across from you or next to you?

A He was sitting in the area.

Q And it is your testimony that you did not see that he had any papers on the table or you don't recall?

A I can't recall whether he had a transcript in front of him, whether it was a newspaper in front of him or what it was. [381]

Q He did have some papers in front of him?

A I don't know what he had.

Q Were they papers?

A Papers, yes.

Q All right, that is all I want to know.

Who else was in that audience with you at that time?

A I think Mrs. Sullivan was there at one time.

Q Mrs. O'Sullivan?

A Mrs. O'Sullivan, yes. Mr. Rotella was there.

Q Mrs. Cornell?

A Yes.

Q Anybody else that you can recall?

A No.

Q Was this a regular meeting of some committee of the legislature or was this -- what was the purpose of the meeting, as far as you know?

A As far as I know, it was a clubhouse, and we go there when we need to go there, you know, when we feel the spirit moves us to go to the clubhouse.

Q The clubhouse?

A Yes.

Q What clubhouse?

A It is a place where the Democrats go. [382]

Q The Democratic Town or County Headquarters?

A Yes, it could be, it could be called that.

MR. WAGNER: I have no further questions of this witness, your Honor.

THE COURT: I have a couple of questions, Mr. Schoenberger, before you begin.

EXAMINATION BY
THE COURT:

Q Was the public defender chosen by the legislature?

A His name was recommended at a caucus, sir, your Honor.

Q He was selected at a caucus?

A Yes.

Q And were various people considered for the position of public defender?

A I don't recall various. The only name that I recall is Mr. Branti's name, sir.

Q Well, at this caucus, was there a discussion of Mr. Branti before the caucus decided to recommend him to the legislature?

A Yes, sir. [394]

*

MR. APOTHEKER: I object to that question. I fail to see the relevance. Mr. Branti and Mr. Paris were appointed.

THE COURT: Overruled.

(Question read.)

A They were both recommended for these positions on their qualifications. Mr. Paris was assistant County attorney for quite a few years and Mr. Branti was the assistant to the DA for quite a few years, and they were both highly qualified with worlds of experience. They were recommended to the caucus and that is it.

Q Did the fact that Mr. Coleman from Ramapo wish to become the chairman of the legislature have anything to do with the fact that Haverstraw was given these two appointments?

MR. APOTHEKER: Your Honor, I think the witness is being led.

THE COURT: Yes, he is, but I would expect that you could concede that he is not a witness that has been examined in advance and prepared by the plaintiffs. I will recognize the witness is a hostile witness and permit him to be led. [409]

MR. WAGNER: Your Honor, we'd like to call the Honorable Dr. Richard Sullivan to the stand.

R I C H A R D J. S U L L I V A N, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WAGNER:

Q Dr. Sullivan, do you have any official position with the county government of the County of Rockland?

A I'm a County Legislator.

Q When were you so elected for the first time?

A In 1974.

Q If I'm not mistaken, you were just reelected in this recent 1977 election?

A That's correct.

Q Dr. Sullivan, did there come a time subsequent to the elections of November of this year when a discussion was had among the Democratic County Legislators concerning certain appointments which would be made by the incoming legislature?

A I assume you are referring to did we have a caucus?

Q Caucus, meeting, whatever you want to call it, yes.

A Yes, there were several caucuses.

Q At those caucuses did the question of the appointments of the Public Defender and County Attorney come up? [410]

A Yes, it did.

Q With regard to the Public Defender, was there more than one name in contention for the position of Public Defender?

A There were several names mentioned, as I remember.

Q Did anyone attempt to elicit your support for any of those potential nominees, either the nominee himself or anyone else on his behalf?

A No.

Q Could you tell us, as best you can recall, with whom you discussed these appointments?

A What appointments? Public Defender?

Q And County Attorney.

A Well, at the caucus I'm sure that -- you know, a caucus is not run by Robert's Rules. I'm sure I mentioned the names, but I couldn't specifically tell you anyone I discussed either individual with.

Q Would it be fair to state that the potential nominees for these positions were

discussed in a general fashion at the caucus?

A Yes.

[414]

*

Q But you testified that you played no part in the initial proposing of those two names for those positions, is that correct?

A That's correct?

Q Did there come a time, between the November election and the appointments of the County Legislature, when the Assistant Public Defenders and Assistant County Attorneys were discussed in caucus?

A As I said, I didn't attend all the caucuses. I do recall Harriet Cornell, our county chairman, saying there would be 12 to 14 openings in the County Attorney's office and the Public Defender's office and if I had any recommendations to submit them to her.

Q Now, did you in fact submit any recommendations?

A Yes, I did.

Q How many did you submit?

A Two.

Q And they were? The names?

A Mr. McCabe and Mr. -- I can't recall his name.

Q Well, Mr. McCabe was --

A Mr. McCabe and I will think of the name.

Q Mr. McCabe was appointed --

THE COURT: Just one second; he is still answering the question. [415]

A Feinberg, Wayne Feinberg.

Q And both of these were submitted by you as Assistant Public Defenders, is that correct?

A No. That is not correct. They asked me to submit two names, and -- they asked me if I had any recommendations, and at a subsequent caucus, I recommended Mr. Feinberg and Mr. McCabe.

Q For what positions?

A For any one of those 14 positions, 12 to 14 positions that I was told that there would be vacancies, where there would be vacancies.

Q In other words, it is your testimony that at the time you submitted these names you were not sure whether they were going to be submitted for Assistant County Attorney or Assistant Public Defender?

A I did not, except Mr. Feinberg did speak to me some time late in December, that he was interested in being in the Public Defender's office, that he had served with Mr. Branti in the District Attorney's Office, that they had had a good relationship, that he felt he would like to serve in the Public Defender's office, but I did not specifically make any recommendation to where he -- recommendation as to one office or the other. [416]

Q Did Mr. Feinberg tell you that he was Mr. Branti's choice as Chief Assistant Public Defender and that Mr. Branti had wanted him for this job for some --

A He told me Mr. Branti wanted him for the job, would like to have him for Public Defender -- I don't know specifically about any particular job except, at least, he wanted him in the Public Defender's office.

Q Dr. Sullivan, if Mr. Branti wanted Mr. Feinberg in the Public Defender's Office, why then was it necessary for you to sponsor him?

MR. APOTHEKER: I object to that question, your Honor.

THE COURT: Overruled.

A I didn't sponsor him.

Q Why was it necessary for you you to put his name to the Democratic caucus?

A To recommend him, because the County Attorney asked me if I had any recommendations and I did -- I had two recommendations; and I made the recommendations.

Q You said the County Attorney. You mean the county chairman?

A County chairman.

Q Dr. Sullivan, did there come a time when you had occasion to have a conversation with Mr. McCabe? [417]

A Yes.

Q Could you tell us, to the best of your recollection, as to the content of your testimony with Mr. McCabe, what you said to him?

A it was a telephone conversation. He mentioned that he would be interested in one of the appointments to the vacancies that existed. He did not specifically mention either the Public Defender's office or the County Attorney's office.

Q Let me see if I have got this

correct. When Mr. Feinberg came to you, he told you that Mr. Branti had already indicated that he wanted him in the Public Defender's office, is that correct?

A I wouldn't characterize it as that.

Q How would you characterize it?

A He discussed -- he had known Mr. Branti for a long period of time, worked with him in the District Attorney's office. Mr. Branti had suggested to him evidently that he would like him, if possible, in the Public Defender's office.

Q Is it your impression as a County Legislator, that the County Legislature has to approve the appointment of Assistant Public Defenders? [418]

A No.

Q Is it your opinion that Mr. Branti has the absolute say as to who he appoints?

A Yes.

Q If Mr. Branti could appoint Mr. Feinberg as a matter of absolute right why would Mr. Feinberg have to come to you and ask you to put his name before the Democratic caucus?

A You will have to ask Mr. Feinberg that question.

Q Mr. Sullivan, Dr. Sullivan, I'm sorry, I show you Plaintiffs' Exhibit 7, and I call your attention to the second paragraph thereof, which states, "The selections (referring to the selections of Assistant Public Defender) were actually made by the Democratic caucus composed of the party's 11 County Legislators."

Do you know Mr. Bob Seltzer whose byline appears on this article?

A Yes.

Q Did you yourself make that statement to Mr. Seltzer?

A No.

* [422]

Q You know his family for how long?

A The McCabe family and the Sullivan family have been well known to one another for a couple of generations.

Q You know him to be a competent attorney and a fine person?

A I do.

Q You had no hesitation in recommending him for either County attorney or public defender?

A Absolutely not.

Q Did you have any other reason for recommending Mr. McCabe?

A I've known bill McCabe, his father, and John, as I say, for a long period of time. I practiced in Haverstraw in a depressed area for thirty years. Mr. McCabe and his son, John, Ambrose, and other McCabes, were, like myself, philosphically attuned to good medical care for the poor and good legal care for the poor. As a matter of fact, the reason I ever ran and became involved in politics I thought as a physician working in a depressed area, seeing the very poor and difficult conditions, that I thought that as someone in government I could make a contribution, and I think I have made a contribution to the health problems that exist in Haverstraw and in the other depressed areas in the County. [423]

Q Did you feel that Mr. McCabe could make a contribution in his own way as an assistant public defender?

A I'm sure he was, like myself, philosophically attuned to the problems of the depressed area, of the ghettoes, and that he would serve tremendously either in the family court or as a public defender.

Q Mr. Sullivan, you are a town delegation of one, I believe, is that correct?

A Yes.

Q You didn't have to discuss your recommendations with anyone, did you?

A That's correct.

Q Dr. Sullivan, did you at any time ever tell either of the plaintiffs, Mr. Tabakman or Mr. Finkel, that in order for them to keep their jobs they would have to contribute money to the Democratic Party, swear allegiance to the Democratic Party or join the Democratic Party?

A I never met either gentleman till the other day when they served me the subpoena. Never met either gentleman.

MR. APOTHEKER: No further questions, your Honor. [424]

THE COURT: Thank you, Dr. Sullivan.

(Witness excused.)

MR. WAGNER: Your Honor, as we advised the Court earlier, there are four other witnesses to testify.

Mr. Grant, we have agreed, need not testify. Mr. Apotheker mentioned to me this morning that he just wanted to know

the wording of the affidavit which I wanted drawn by Mr. Grant. That relates only to the conversation with Mr. Seltzer.

Mr. Coleman, as your Honor is aware, is still out of the country.

Mr. Gdanski, to the best of my knowledge, is still ill, and Mr. Rubenstein, as your Honor heard earlier, we have attempted to subpoena over the weekend.

It is my understanding that, from our discussion on Friday, that this case will go over to February 8th at 2:30 p.m., is that correct?

THE COURT: I think that is what we agreed, yes.

* [433]

S A M U E L C O L M A N, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WAGNER:

Q Mr. Colman, do you hold any official position in Rockland County government?

A Yes, I do.

Q What is your position?

A I am Chairman of the Rockland County Legislature.

Q You were re-elected this past November? Is that correct?

A Yes.

Q You are now serving your second term?

A Yes.

Q Now, Mr. Colman, did it come to your attention at any time, either before or after the elections of this past year, 1977, that certain county offices would be required to be filled by the incoming Legislature, and I speak specifically of the County Attorney and the Public Defender?

A Yes.

* [438]

THE COURT: Just one second.

THE WITNESS: I answered the question that we let it be known to all delegations, not only Mr. Branti and Mr. Paris, we let it be known to all delegations that that is all we were interested in and we would not recommend candidates

to any other major office.

Q Now, if I am not mistaken, Mr. Colman, the current makeup of the Rockland County Legislature gives Ramapo six legislators, all of whom are democrates? Is that correct?

A That is correct.

Q There are eleven democratic legislators altogether?

A Yes.

Q So Ramapo has six; Haverstraw has two, and Haverstraw's entire delegation is two?

A Yes.

Q Two democrates. So, in effect, Ramapo and Haverstraw have 100 percent democratic delegations? [439]
Is that correct?

A That is correct.

Q And Clarkstown has three republicans and two democrats?

A That is correct.

Q And Stoney Point has one delegrate, and that is a democrat? Is that correct?

A You left out Orangeburg.

Q And the Town of Orangeburg has no democratic delegates?

A That is correct.

Q Now, did there come a time when you had occasion to discuss with your delegation the fact that there were some Assistant County Attorneys and Assistant Public Defenders to be appointed?

A We discussed that there will be opportunities for us to make recommendations to Public Defender and to County Attorney, yes.

Q Did there ever come a time when it was agreed that your town specifically, Ramapo, would be entitled to a certain number of recommendations to each position, that is, Assistant County Attorney and Assistant Public Defender?

A I believe that a number was agreed to for a total to both, but not [440]
specifically.

Q Do you recall what that number was?

A I believe the number was six. I'm not sure.

Q In other words, that there would be

six Assistants to be divided up between the Public Defender and the County Attorney's office?

A it was agreed that Ramapo would be given the opportunity to make six recommendations.

Q That is, six in toto?

A that is correct.

Q did you yourself recommend anyone to either position? By that I mean, Assistant County Attorney or Assistant Public Defender.

A Not exactly. I let it be known to the other members of the Ramapo Delegation that I was primarily interested as incoming chairman that those Assistant County Attorneys that were serving now should be recommended to the new County Attorney for reappointment.

Q What was the basis for your so stating to your delegation?

A I observed Mr. Schoenberger on numerous occasions. He was serving as an attorney to a committee of which I was chairman, the Transportation Committee. I

was very impressed with the work Mr. Blecher was doing in labor negotiations, and I was [441] impressed with Mr. Hurwitz, who is not from my town, but who moved to my town, in his handling of election law.

So, as incoming chairman, I felt that it was in the interest of my people, as well as in the interest of the Democratic Party and in the interest of good government that those Assistant County Attorneys who were incumbents and did, in my opinion, a good job, be recommended for reappointment.

Q Mr. Colman, do you think that the same philosophy applies with regard to Assistant Public Defenders who were doing a good job, that they should be kept on, too?

A I can tell you that if I was aware of Assistant Public Defenders who did an excellent job, I would make the same recommendation as I made with respect to Assistant County Attorneys.

Q Did anyone ever bring the name of Mr. Aaron Finkel to your attention as an Assistant Public Defender who had served under both Arnold Becker, a democrat, and Frank Barone, a republician, and who was from your town of Ramapo?

A No, I do not recall Mr. Finkel's name being mentioned to me. [445]

*

Q Whose appointments are they?

A Assistant Public Defenders are the appointments of the Public Defender and Assistant County Attorneys are the appointments of the County Attorney.

Q But the recommendations were those of the Democratic Caucus? Is that correct?

A One set of recommendations was coming from the Democratic Caucus.

Q And you yourself did, in fact, recommend three Assistant County Attorneys to be kept on?

A I myself recommended to the Ramapo delegation and to the chairman of the Ramapo Democratic Party that the three incumbent Assistant County Attorneys be recommended for reappointment, yes.

Q Do you know whether the recommendations made by the Democratic Caucus contained the names of any republicans or independents? Or were they all democrats?

A I do not know that.

* [450]

MR. WAGNER: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. SCHOENBERGER:

Q Mr. Colman, did you ever ask of Mr. Finkel or of Mr. Tabakman to either swear an oath of allegiance to the Democratic Party, contribute money to the Democratic Party, or change their registration to the Democratic Party?

A No, I did not.

Q I don't recall whether Mr. Wagner asked you: Do you know Mr. Seltzer?

A Yes, I do.

Q Did you have occasion to speak with Mr. Seltzer just prior to December 15, 1977?

A Yes, I did.

Q At that time did you say to Mr. Seltzer that you hoped the legislators could make a number of recommendations so that Peter Branti and Mark Paris would have a variety of candidates to choose from?

A It is paraphrase. Yes, I said something to that effect.

*

[458]

Q Now, briefly, because I know you could spend a great deal of time on this, tell us, all of us, what the Transportation Committee of the Rockland County Legislature and the Rockland County Legislature did with reference to transportation in Rockland County.

MR. WAGNER: I have to object on the grounds of relevance.

THE COURT: Objection sustained.

Q Did there come a time when the Transportation Committee of the Rockland County Legislature made recommendations to the full Legislature with reference to the recommendations of a transit coordinator?

MR. WAGNER: Objection.

MR. SCHOENBERGER: Your Honor, there has been some argument by the plaintiffs that there has been a pattern within Rockland County of the party in power appointing its own people. This is an example of a top position in Rockland County, top salary and top benefits, and this is an example as to the extent to which the appointment was determined by the Legislature, which was a democratic controlled Legislature and is very

relevant to this alleged pattern.

THE COURT: I will overrule the objection.

[459]

MR. SCHOENBERGER: Would you like the question read back?

THE WITNESS: Yes, I would like the question read back.

(Question read)

A Yes, the Transportation Committee of the County Legislature advertised nationally in professional journals and also in The New York times and the Journal News, and we solicited resumes from all over the country to find the most qualified person who could fill the position of Rockland County Transit Coordinator.

We did that on two occasions, because the first one served us approximately a year and he left, and the second one was hired and he is still with us.

The first one's name was Mr. Hoschek. He was hired from New Jersey. I did not know his political registration when I hired him, and to this day I don't know what his political registration is, though I heard subsequently rumors that he was republican.

The second gentleman is Mr. Thompson. He still serves as Rockland County Transportation Coordinator. He was hired from Mechanicsville, Pennsylvania. I did not check his registration then; I do not know what it is today. He was hired solely on the basis of qualifications. [460]

I would like to add that at the same time as we were advertising in the Journal News and various publications, we also received recommendations through the political process and local applicants, and we chose -- and I am proud to say that I was instrumental in the selection process -- we chose a person strictly on qualifications.

MR. WAGNER: I object to the entire line and ask that the questions and answers be stricken. There is no relevance between the situation here and nationwide solicitation of an expert in a specific field.

The positions of Public Defender and County Attorney are jobs which have traditionally gone to members of the local bar and have traditionally been a political appointment.

I concede by virtue of the specialties required of a transit coordinator there

would be solicitation made nationwide, but I don't see where it is relevant in this case.

THE COURT: I will overrule the objection, although I see the force of the argument.

Q Mr. Colman, did you receive recommendations within the County of Rockland in the Democratic and Republican Parties with reference to a person, a suggestion or a recommendation, that that person be hired for County Transit Coordinator? [461]

A There were names submitted that came through the political process, and there were names submitted for democrats and republicans, yes.

Q Mr. Colman, do you know a George Renc?

A Yes.

Q Does he hold any position in the Rockland County government at present?

A Yes, he is the director of the Department of Audit and Control.

Q Are you familiar with Mr. Renc's background and how he became director of the Department of Audit and Control?

A Yes, he was an appointee of the previous republican controlled Legislature.

Q And at the time he was appointed by the previous republican Legislature, was he a republican?

A To the best of my knowledge and belief, I have not checked it. Yes, he was.

MR. WAGNER: I am going to interpose an objection, unless Mr. Schoenberger brings us to a time reference. Mr. Renc may have been appointed four years go, for all I know. I don't know when he was appointed. [462]

MR. SCHOENBERGER: I will bring it up-to-date and connect it.

Q When the Legislature switched from republican to democratic in January of 1974, did the subject of Mr. Renc's reappointment come up?

MR. WAGNER: I object. It is irrelevant what happened in 1974.

MR. SCHOENBERGER: If your Honor will allow me to finish, you will see its relevance.

THE COURT: It seems to me that part of the plaintiffs' case here are allegations of a political pattern historically.

MR. WAGNER: That is correct, with regard to the positions of County Attorney and Public Defender. There are other positions that I know of my own knowledge where democrats have been reappointed by republicans and vice versa.

It has been brought out in testimony that under the former Board of Supervisors, certain departments, such as the Highway Department, which always came from Stony Point or Haverstraw. That is the way it was done then.

We are limiting the political appointments end of it to County Attorney and Public Defender, and to the best of [463] my knowledge those appointments have been made by the party in power.

(Newspaper article marked Defendants' Exhibit A for identification)

Q To repeat, can you tell us the circumstances surrounding Mr. Renc's appointment in January of 1974?

A Yes. I was a newly elected member of the Rockland County Legislature, and the discussion of reappointment of Mr. Renc, who was a republican appointee from the previous Legislature, was discussed.

I had an opportunity to vote for Mr. Renc's reappointment based solely on his qualifications.

Q Did you vote in favor of his reappointment?

A Yes, I voted in favor of his reappointment.

Q Did the subject of Mr. Renc's reappointment come up again in January, 1978, with the new Legislature?

A I do not recall. I do not recall the question of his reappointment coming up.

Q Mr. Colman, as chairman of the Legislature there are some appointments, particularly now, those to the Manpower Office, that are made directly by you?

A That is correct.

Q If I am not mistaken, didn't you recently make some appointments to the Manpower Office? [464]

A Yes, that is correct.

Effective today, I have made five appointments to the Rockland County Manpower Office, for the position of Manpower Coordinators, on the recommendation of the person in charge of that department, and I have appointed all the members from a civil service

list. I am not familiar with most of the names on that list, nor their political affiliations.

However, on that list the No. 2 person is a well known republican, but at the recommendation for competence from Mr. Condello I proceeded to make the appointment.

I might add that this is in keeping with the pledge I made when Mr. Dusanenko questioned me both on January 1 and on January 3, when I said that non-political appointments will be made solely on the basis of competence, and I intend to be that kind of a chairman.

Q Do you recall the name of the man that was an active republican that you named?

A Mr. Tom Ford. He is the assistant to the republican supervisor of the Town of Stony Point.

Q An active republican in the Town of Stony Point?

A Yes.

Q And even though he is an active republican in the Town of Stony Point, you did not discriminate against him because of his political beliefs? [465]

A No, I did not.

Q I show you from the transcript of the January 3, 1978 meeting, Resolution No. 20 of 1978.

A Yes.

Q What does that resolution mean, Mr. Colman?

MR. WAGNER: Objection. It does not require an explanation.

MR. SCHOENBERGER: Once again, Mr. Wagner sought to elicit testimony from other legislators as to the meaning of that resolution and how it related to these two plaintiffs, and I am attempting to do the same thing.

THE COURT: I will overrule the objection.

A This was a resolution to authorize the Public Defender to appoint his assistants.

Q Within the budget and salaries fixed by the County Legislature?

A That is correct.

Q Anywhere in this resolution does it direct the Public Defender to hire anyone?

MR. WAGNER: Objection. The resolution speaks for itself.

THE COURT: Sustained. [466]

MR. SCHOENBERGER: I have no further questions at this time, your Honor.

THE COURT: I want to ask a few questions.

BY THE COURT:

Q How many recommendations were made by the Legislature or legislators to the County Attorney for the appointment of Assistant County Attorneys in December or January?

A I do not know. I do not even know how many Assistant County Attorneys there are. It is something I am not familiar with.

Q Were all of those recommendations considered at a Democratic Caucus prior to the time that they were made?

A No. The process was not that formal. We knew the total number of Assistant County Attorneys and Assistant Public Defenders that were available,and I believe the number was thirteen or fourteen. I do not recall. And I knew that we would be making that amount of more recommendations to the Public Defender and to the County Attorney for their appointments.

But I do not recall that this was done

Colman-

in one meeting. As a matter of fact, I am sure it was not done at one meeting where formal things were given to the chair- [467]
person and asking her to go formally with those recommendations. This was a process that probably took several weeks.

Q Well, was the end result of that process that recommendations for thirteen or fourteen appointments were transmitted by the chairperson to the County Attorney and to the Public Defender?

A I believe so.

Q Was each of those persons appointed by the County Attorney or by the Public Defender?

A I do not know.

Q Do you know of any recommendation that emanated from any legislator that was not acted upon in the way of making an appointment by either the County Attorney or the Public Defender?

A I do not have firsthand knowledge, but I did hear of some, yes. I have heard that some appointments were rejected by both the County Attorney and by the Public Defender.

Colman-

Q When there was any such rejection, was the person who submitted that name at the time, the legislator, asked to submit another name?

A I do not know. It would have been the same legislator or it would have been the town delegation, probably that would be asked to submit other names. However, I also [468]
know that if the County Attorney or the Public Defender wanted someone specifically who he knew to be competent and qualified, they let it be known that they wanted that person appointed. I know for a fact that appointments were made of people who the County Attorney and Public Defender wanted appointed.

It was not as though the Democratic Caucus was giving recommendations and the County Attorney and Public Defender had to take them.

Q Well, if the County Attorney or Public Defender wanted a specific person or persons to be appointed, would they submit those names to the democratic legislators and ask that someone sponsor them?

A Not quite that way.

The way I would explain it -- and this

is an assumption on my part -- if the County Attorney or Public Defender wanted someone appointed, he could either appoint them, or he could try to see to it that other people approved of it also.

I know in my own case if I wanted to make an appointment of soneone, it would be politically very smart to have that person recommended by a number of people. Why not? I want him, anyhow. I would like to see somebody else recommend him also. This is done all the time. It costs nothing, and it is a nice [469] gesture.

So, in that sense, yes. But it is not my impression it was required. As a matter of fact, when I stated to the reporter, I meant exactly what I said, that the recommendations that we will make will enable the Public Defender and the County Attorney to have a variety of names to choose from.

It has also been my impression that these people will have other sources, such as they know attorneys, likely they know people, they have business connections, and we would be only one source from which selections will be made. That is what I

told Mr. Seltzer in that portion of that article that Mr. Schoenberger tried to introduce as evidence.

Q Who are the political leaders in the Democratic Party in Rockland County?

A It depends on who you ask.

Q I am asking you now, and you are chairman of the Legislature --

A It is --

Q Let me finish, please.

I cannot imagine going to a more reliable source than you.

A Well, Rockland County does not have a political structure such as New York City. [470] We have a chairperson of the Democratic Party; we have chairpersons of every town; we have chairpersons of the villages.

However, they are not the bosses. They do not call the shots. There are no democratic leaders who can deliver the votes or who call the shots, and that is true of the republicans as well in Rockland County.

Even though we are in close proximity to New York City, we are different. And I really don't know how else to answer it.

Q Mr. Colman, this hearing has been

going on for quite a while now and there has been a great deal of testimony, and I have not yet heard how Mr. Branti happened to be selected to be Public Defender. Perhaps you can tell me.

According to your testimony, these are political appointments. I think you said the Public Defender and the County Attorney were political?

A Yes.

Q I would like you to tell me how Mr. Branti happened to be selected? What was the process through which he was selected? How did that process develop?

A As I testified before, there were several names that were more or less seriously considered. But there were other [471] positions that were considered, County Attorney, clerk to the Legislature, chairman of the Legislature, majority leader.

Rockland County consists of five different towns. We are elected. My district is the Town of Ramapo, and six of us run in this town. Another legislative district is Clarkstown, Haverstraw, Stony Point and Orangeburg. So it is a sort of fluid process whereby it is

known that one town cannot possibly control all the key posts, because politics in Rockland County is town oriented, we are elected through the town.

So, although I am chairman of the Rockland County Legislature, I am elected by the people of Ramapo. And although I am county oriented, because that is my duty, politics being what it is, it can be assumed that I would be most responsive to the people of Ramapo, because they elected me and they will presumably have an opportunity if I run for re-election to vote for me again.

The clerk to the Legislature is also a very sensitive position. County Attorney is also a sensitive position, and so is the Public Defender. Assistant to the chairman is also a sensitive position. It is known that a town cannot aspire to control more than usually one or two of these positions, because then it will give this town too much clout, too much [472] opportunity to do for their constituents at the expense, perhaps, of the constituents of another town. So it was never a question of having five or four or three candidates for Public

Defender and we voted on them. It was a question of having candidates for Public Defender, candidates for County Attorney, candidates for chairman, candidates for clerk to the Legislature -- not County Clerk -- County Clerk is an elective position -- assistant to the chairman.

And all these things had to be apportioned in a responsible, reasonable way, so that every township is satisfied that their interests will not be foresaken or sacrificed and their interests protected.

In Ramapo -- and that is the only place I can speak with personal knowledge -- we expressed an interest in the chairmanship and to keep the clerk to the Legislature. We automatically knew that when we did that that that alone was the most we could expect; when we made that decision we knew it would be highly unlikely that the County Attorney or Public Defender would come from Ramapo.

Now, that means that the six Ramapo legislators when they decided to back me for chairman and they decided to back Ms. Seigerman as clerk to the Legislature, knew that they probably, not for sure, but they

knew they probably were giving up any [473]
opportunity for naming the County Attorney and Public Defender. Why they did it? I know why I was seeking it. I do not know why the other Ramapo legislators supported me versus giving up the chairmanship and looking for County Attorney or Public Defender, but when they did that, they knew that it was very unlikely there was opportunity to have the County Attorney or Public Defender.

Well, that eliminated Mr. Schoenberger, Mr. Goodfriend and Mr. McAlevey.

Q It eliminated all of your constituents?

A Yes.

Now, the process could have taken a different shape if Mr. McAlevey or Mr. Schoenberger or Mr. Goodfriend had more support in the Ramapo Democratic Party within the Ramapo delegation. Then the delegation would have decided not to push me for chairman or not to push Mrs. Seigerman for clerk to the Legislature, but to concentrate on the Public Defender.

There was also a candidate for chairman from Haverstraw, and if we had pushed for

Public Defender, Mr. Grant would have had a better opportunity to be chairman. I hope I am making myself clear.

Q Well, at this stage you had, in effect, removed from many of the Ramapo [474] legislators any possibility of their suggesting their own candidate to either one of these positions of County Attorney or Public Defender?

A I did not do it.

Q The way the process worked, by a decision on the part of your co-legislators in Ramapo that you were going to be put up as candidate for chairman and Mrs. Seigerman was going to be put up for reappointment as clerk to the Legislature, that decision on the part of your constituent legislators was also a decision that they would not have their own candidate for County Attorney or Public Defender?

A That is correct, but if I am not presumptuous, I would like to point out that is likely what happens in any process.

If the Manhattan Democratic Committee is pushing someone for candidacy to the United States Senate, they cannot at the same time

push someone for Attorney General or for any other major position. These are the political facts of life, that there is a geographic distribution of these positions, and in Rockland County we do not have a centralized county government. It consists of delegations from different towns.

Q But now neither you nor your colleague legislators from Ramapo were [475] giving up any right to vote on who the candidate for appointment to Public Defender or to County Attorney would be?

A No. You are correct, sir.

Q Were you bound by the caucus so that you had to vote for the candidate that came out of the caucus?

A We had a gentlemen's agreement that any political decision that received eight votes would also receive the remaining three votes.

Q So, in effect, the selection of County Attorney and of Public Defender was a selection that was going to be made by the Democratic Caucus?

A That is correct.

Q What input was there in the Demo-

cratic Caucus, aside from the input by people who nominated or pressed various candidates? Were there other influences at work?

For example, the county chairperson? Were there other sources of power or recommendations with respect to these choices?

A I am not aware, no one approached me, except what was happening among those people in the Caucus. In other words, the county chairperson, yes, had an influence. This was discussed. There were names being talked about. The chairpeople of the various towns. I assume that if some elected [476] officials would call me, I would listen. But it so happens that I do not recall anyone. It was pretty much left to these eleven people, plus the political chairpeople of the party and the towns.

THE COURT: I don't have any more questions. Perhaps, Mr. Schoenberger, you might want to ask something more to clear up something I may have confused.

MR. SCHOENBERGER: No, I don't think you have confused anything. I think you have elucidated many things.

THE COURT: I don't want to urge that you should.

MR. SCHOENBERGER: There is one thing I would like to bring out on the record.

BY MR. SCHOENBERGER:

Q You recall the meeting of January 3, 1978?

A Yes, I do.

Q And your appointment of your administrative assistant, Diana Rivet?

A Yes, I do.

* [478]

MR. WAGNER: Your Honor, this is so outrageously leading I have to object. Mr. Schoenberger just told the witness what happened.

MR. SCHOENBERGER: It is in the transcript. I just want to highlight one item.

THE COURT: I will overrule that objection, but I suggest that we may be getting into an area where you should not be leading any more.

MR. SCHOENBERGER: Thank you, your Honor, for the suggestion.

Q Do you recall that?

A Yes, I do.

Q Do you recall also that democrats voted against that?

A Yes, I do.

Q And if I recall correctly, that motion to fix her salary failed?

A That is correct.

MR. SCHOENBERGER: I have no further questions.

REDIRECT EXAMINATION

BY MR. WAGNER:

Q Diana Rivet, before she was appointed assistant to the chairman, was the County Attorney for the last four years? [479]

A That is right.

Q Will you tell the Court why Mrs. Rivet was not continued on as County Attorney?

A I am not sure I know. I can tell you why I appointed her as my assistant.

Q Mrs. Rivet is from Orangeburg?

A That is correct.

Q Orangeburg did not elect any democratic legislators?

A That is true.

Q Mrs. Rivet did not get any sponsors for that position?

A I disagree, if I am allowed. That is not the reason.

Because I am from Ramapo, I appointed Mrs. Rivet as my assistant. this is the choicest job, the biggest plum I had to give away, and I didn't have to have anyone approve, and yet I appointed a woman from a different town as my assistant. This was done solely on competence.

Q Mr. Colman, wasn't this also done as part of a package whereby Ramapo would get the chairmanship and the clerk of the Legislature; Haverstraw got the Public Defender and the County Attorney; and in return, Mrs. Rivet was given this appointment as part of an overall political package? [480]

A Mr. Wagner, I am not embarrassed by the fact that there is an apportionment geographically. It happens. It is not true in this case.

I appointed her because I thought she was most qualified and would make me, as chairman, look good. This is a political decision I made, and I live with it. There were repercussions. Some people were happy, some not happy, but I have to deny this was part of a package. It was not.

I did testify that there were other

accommodations that were made to geography. This one was not.

Q Mrs. Rivet took a substantial cut in salary from County Attorney to your assistant, didn't she?

A I don't know what the substantial means.

Q Wasn't the County Attorney making about $29,000 a year?

A If that is the case, then she is making $25,000; she then took a cut of $4,000. Mrs. Rivet, I don't know what her personal ambitions are, but she was extremely pleased when I offered her to be assistant. Many people take monetary sacrifices.

To be a judge is a fiscal scrifice, yet there is a big line of people who want to be judges. People make decisions based on [481]
things other than money. Mrs. Rivet was very happy when I offered her to be my assistant.

Q Mr. Colman, didn't Mrs. Rivet want to continue on as County Attorney but could not because she could not get any sponsors?

A You will have to ask her. I could not answer that. I can tell you that

when I appointed her she was happy to be assistant to the chairman.

Q But she could not get sponsors and she was happy to get any appointment?

A I disagree with you, but if you want to debate it, I will be delighted to.

Q Mr. Colman, you indicated that the Public Defender and County Attorneys had the absolute right to make their appointments to assistants?

A That is correct.

Q And they didn't have to get the approval of the Democratic Caucus, but you indicated that it would be politically wise for Mr. Branti or Mr. Paris to have someone else sponsor these individuals as well?

A I never used the word "sponsor."

Q I withdraw "sponsor".

A And also I gave an example to the judge's question, that if I as an elected official had an opportunity to make an [482]
appointment of someone who I wanted, anyhow, but you wanted to recommend him, I would let you recommend him, even though you are not from the political party; it is good thinking to do it; it doesn't cost any-

thing; it creates good will.

Q If that is the case, then I can understand why certain county legislators would recommend certain names to the Public Defender; I can also understand why Mr. Branti or Mr. Paris might go to certain legislators and say, "Will you please recommend so-and-so."

Can you tell me why, in your opinion, one of the proposed Assistant Public Defenders would have to go before the Caucus and ask them please to sponsor him if he already had Mr. Branti's approval?

A I don't know of such an instance and I don't know why he would have to do it.

Q You indicated that Resolution No. 20 made at the meeting of January 3, 1978, was merely to authorize the Public Defender to hire such assistants as were provided for in the budget?

A That is correct.

Q Would you characterize that as more or less an implementing resolution.

A Well, obviously, it is not, because we didn't have a unaminous vote on it. [483]

Q Isn't is a fact, Mr. Colman, that

of the people present, the eleven democrats voted for this resolution and all of the republicans who were present, all of the republicans legislators, except Mr. Grogan, who was not present, all voted against it?

A That is a fact.

Q Mr. Colman, the Public Defender is considered to be a department head?

A I believe that is the designation, yes.

Q And the County Attorney, he is the department head, he is the head of the County Attorney's Office?

A That is correct. [487]

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I was telling him that I as chairman or as member of the Legislature, when I have an opportunity to vote, these jobs and my votes will not be based on politics, and since then and before then I have lived up to this credo.

Q Didn't you say that every political appointment that was being made that night were political appointments "They were recommended by the Democratic Caucus and I will vote for them"?

A And I was referring to the County

Attorney, the Public Defender, the clerk to the Legislature, the assistant to the chairman, and whatever other political things that we did, the Legislature and the chairman.

The Assistant Public Defenders are appointed by the Public Defender. The Assistant County Attorneys are appointed by County Attorney. I was not referring to those appointments.

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[489]

Q Didn't you indicate in your direct testimony before that you favored keeping on existing employees who were doing a good job?

A Who I was aware were doing a good job, yes.

Q Did you know, did you have any reason to believe that Mr. Tabakman was not doing a good job?

A that's not the way I reason. I have to know of someone doing a good job before I would recommend rather than the other way around.

Let me put it this way: Mr. Wagner, I really think that the Count wants to get to the bottom of this thing. I came here volun-

tarily and I truly want this thing to be clarified. This does go to how I feel and what I believe, and I believe the record shows this.

When I of firsthand knowledge knew of people doing an excellent job, when I had the opportunity to vote for them, I voted for them, regardless of party, and when there was opportunity to make recommendations, I did that too regardless of party.

I did not know Mr. Tabakman in any way, good or bad, and I was not going to make that recommendation, especially when this was given to me in exchange for a vote I did not need, and I felt demeaned by the request.

[490]

Q Aren't you primarily concerned, Mr. Colman, as a county legislator, with appointing the best and most qualified public servants for county positions?

A Yes, I am.

Q all other things being equal, don't you think that two years or seven years experience in an office makes someone relatively more qualified than another person who doesn't have that experience?

A Not necessarily so.

Q All things being equal.

A Not necessarily so. As a matter of fact, if I may, I would like to say this: The reason we have elections is we have opportunity to throw rascals out.

Now, the Public Defender we replaced did not enjoy a good reputation where my constituents were concerned. So I had absolutely no confidence in any of his assistants. I did not tell him who to keep, who not to keep, but basically, if Mr. Barone was looked upon with great respect by the people of Ramapo, regardless of what party they are, I would then consider what you say, yes.

This is why I am relunctant, and I stated to Mr. Dusanenko and I stated in this testimony, I would be very relunctant to vote against Mr. Weinberg, because he enjoys the respect of the people of the town I represent. [491] This was not true of the Public Defender's office.

Q Mr. Colman, when Mr. Barone was originally appointed to the position of Public Defender I believe you were on the Legislature at that time, or was that after

your election?

A I did not appoint Mr. Barone.

Q I'm sorry. I withdraw that.

Do you know whether it is not a fact that Mr. Barone at the time of his appointment was from the Town of Ramapo?

A I do not know that.

Q Are you familiar with Arnold Becker?

A Yes, I am.

Q Arnold Becker was the Public Defender prior to Mr. Barone, is that correct?

A That is correct.

Q Does Mr. Arnold Becker enjoy an excellent reputation in your community?

A In my opinion, yes.

Q Mr. Becker is a democrat, isn't he?

A That is true.

Q Were you aware of the fact that Mr. Becker appointed Mr. Aaron Finkel to that job originally?

A No, I did not. I was not aware.

Q Did you attempt to find out whether any of the existing Assistant Public De- [492] fenders, such as Mr. Tabakman and Mr. Finkel enjoyed the confidence of Mr. Becker, whom you respected?

A I did not, because these were not my appointments. I do not delve that deeply into other people's appointments. I just do not.

Q Mr. Finkel is a constituent of yours, isn't he.

A That is correct. he never requested for my support or recommendation.

Q When the positions of Assistant Public Defender became available did you make any effort yourself to canvass your constituency to find out who was available?

MR. SCHOENBERGER: I am going to object to that question, Your Honor. I think most of all of this has already been asked and answered, your Honor. We have gone through this on direct, we have gone through it on your Honor's questioning, we have gone through it on cross, now we are going through it again.

THE COURT: I am inclined to think that's right.

MR. WAGNER: All right, I will withdraw the question, your Honor.

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* [516]

(Hearing resumed)

MR. TABAKMAN: Your Honor, Mr. Wagner will be in in a moment.

THE COURT: Mr. Wagner, are you ready to proceed?

MR. WAGNER: yes, your Honor, we are.

At this time the plaintiffs call Mr. Robert Seltzer.

R O B E R T S E L T Z E R, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WAGNER:

Q Mr. Seltzer, I show you Plaintiffs' Exhibit 7 in evidence.

I ask you, Mr. Seltzer, are you a reporter for the Rockland County Journal News?

A Yes, I am. [517]

Q Were you the author of that article which bears your by-line in the December 24, 1977 issue of the Rockland County Journal News?

A Yes, I was.

Q You wrote that story; is that correct?

A Yes, it is.

Q Mr. Seltzer, I call your attention to the second paragraph of that exhibit which indicates and I quote:

"The selections were actually made by the Democratic Caucus composed of the party's eleven county legislators."

I ask you was that information given to you by some specific individual or was that your own interpretation of what happened?

A It was given to me.

Q By an individual?

A Yes.

Q I would like to ask you at this time who gave you that information?

A I respectfully decline to answer that question. The information was gathered for me when I was working on a news story. The news story ran and was published. [518]

The information was given to me confidentially and it was clearly understood between the person that gave it to me and myself that it would not be attributable to them.

MR. WAGNER: Your Honor, at this point I would respectfully submit that there are several avenues open to the Court, which we have discussed previously.

On behalf of the plaintiffs, I would be perfectly willing to have this Court adjourn in camera and for your Honor to elicit the information from the reporter to be kept confidential by your Honor and used only for your Honor's purposes in making a decision in this matter. Or, in the alternative, if that is not satisfactory, your Honor could, again in camera, question Mr. Seltzer to find out if the information he has is, in fact, pertinent and if it turns out your Honor feels it is not pertinent, then I would not press the point.

[526]

*

I don't understand your argument at all.

MR. REDIS: My argument is that whoever made that statement --

THE COURT: your argument, apparently, is that I am not going to decide this case predicated upon an answer to this ques-

tion. I think that is probably a safe assumption, but the answer to that question, I am sure Mr. Wagner will say, may lead to an avenue of pursuit which has not previously been pursued.

MR. REDIS: I believe, your Honor, that the First Amendment does not yield to such a precarious type of answer like that. It has to be an overwhelming an compelling reason. Not maybe, not perhaps, and not hypothesis.

THE COURT: I think without even hearing from you, Mr. Wagner, unless you insist that I hear from you, I am going to rule on this.

I am not going to direct Mr. Seltzer to answer the question. Whatever the source of the statement, which appeared [527] in the newspaper article, whether it is accurate or inaccurate, whether the source was informed or uninformed or misinformed, the fact of the matter is that the plaintiffs in this case have had a complete opportunity to explore the truth or falsity or relative truth or relative falsity of the statement in that article in the course of

the presentation of their case by examining just about everyone who would have been in a position to know the facts.

This being so, the chances are quite good that an answer to this question, if compelled, would come up with someone who either has already been examined in the course of this action or could have been examined in the course of this action.

Now, perhaps it might be interesting to know who it was so that you could have some test of the credibility of at least one of the many witnesses who testified here, but I don't really think that that is a consideration which can be put into the balance of this case.

I really think we have reached the stage where the significance of an answer to this question is relatively slight compared to the very substantial constitutional considerations on the other side of the coin. [528]

I am not going to reach the constitutional question. I am just simply going to say that I shall not

require Mr. Seltzer to answer the question.

MR. WAGNER: Very well, your Honor. I am sure your Honor is aware of our position for the record and I will not restate it at this point.

THE COURT: I think your position is very clear. I think your position is that you are entitled to an answer to this question; that an answer to this question is quite relevant to your case and it is very important to exhaustion of every possible avenue of inquiry; and that there is no constitutional right of Mr. Seltzer to refuse to answer to answer either under federal law or under state law which outweighs the constitutional rights of your clients to present their case.

I understand your position and my ruling is made on the basis of that understanding.

MR. WAGNER: Thank you, your Honor. In that case, then, I would excuse Mr. Seltzer.

MR. REDIS: Thank you, your Honor.

MR. SCHOENBERGER: I have no questions of Mr. Seltzer, your Honor.

(Witness excused)

* [530]

THE COURT: You want this marked as an exhibit?

MR. WAGNER: Yes, your Honor, I do.

(Plaintiffs' Exhibit 14 received in evidence.)

MR. WAGNER: your Honor, the plaintiffs rest.

MR. SCHOENBERGER: Your Honor, I have two brief things to say.

First with regard to what Mr. Wagner just stated with reference to calling Republican legislators to testify, he made the assumption that they would all testify as Mr. Dusanenko testified. I am sure your Honor will give Mr. Wagner's testimony as to what the legislators would testify to the proper weight in this case.

The Second thing I would like to say is I would like to make a motion at this time to deny the preliminary injunction and the temporary restraining order and dismiss this case. There has been no proof that the plaintiffs suffered a loss of constitutional rights in this case.

There has been no proof of the Elrod v. Burns situation or facts.

All the plaintiffs have shown is that there existed a political system in Rockland County. We readily admit that, your Honor.

There has been ample testimony that the caucus, the democratic caucus made recommendations; that the Public [531]
Defender himself passed upon those recommendations, the Public Defender himself appointed people to this office.

When the plaintiffs originally obtained this temporary restraining order, they submitted affidavits and in their affidavits they stated they believe they had a right of expectancy in this job. The testimony from their own witnesses and from our witnesses showed that they served the pleasure of the Public Defender and there was, your Honor, we submit, no right of expectation.

Based upon all the proof that has been submitted thus far, your Honor, and since the plaintiffs have rested and

they are done submitting proof, we ask that this motion be granted, the preliminary injunction be dismissed, the temporary restraining order be dismissed and the summons and complaint in this matter be dismissed.

THE COURT: I will reserve decision on that motion.

MR. SCHOENBERGER: At this time, your Honor, we have subpoenaed Mr. Barone to testify and we would ask that he be excluded.

MR. WAGNER: No objection, your Honor.

THE COURT: I think we have an operative rule in the course of this trial that all witnesses or prospective witnesses are excluded. [533]

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Finkel-direct

A A R O N F I N K E L, resumed.

THE CLERK: You are still under oath, Mr. Finkel.

DIRECT EXAMINATION

BY MR. SCHOENBERGER:

Q Mr. Finkel, am I correct that you

were appointed to the Public Defender's office in approximately March of 1971?

A Late March, yes.

Q Can you tell me about your political background, political involvement in Rockland County at the time just before -- just prior to and at the time of your appointment as Assistant Public Defender?

A I and I believe my wife also had been committeemen for some time with the Ramapo Town Republican Committee. I believe we were considered County Committeemen.

Q Did you ever submit a resume to Mr. Becker prior to your being hired as Assistant Public Defender?

A Yes.

Q To the best of your knowledge, prior to your being appointed as an Assistant Public Defender, did any county legislators or anyone else active in the Republican Party in Rockland County go to Mr. Becker and speak to him on your behalf? [534]

A I don't know that for a fact, but I certainly wouldn't be surprised if some did.

Q Do you know if Mr. Clinton Dominick supported you in your attempt to obtain a position?

A D. Clinton Dominick I'm rather certain did not in any way come forward on my behalf for that position, although I am certain that if I had asked him he probably would have made a call for me.

Q Mr. Finkel, do you recall your previous testimony concerning your change of registration from Republican to Democrat?

A Yes.

Q Do you recall when you filed the application to change parties?

A It was sometime in February. My almost certain recollection is that it was sometime in February 1977.

Q Do you recall when it was to take effect?

A January 1, 1978.

Q Prior to your filing that change of registration in February of 1977, how long had you been a registered Republican?

A I would think about seventeen years, maybe somewhat less, but for quite some time.

*

[541]

Q Since you recall so specifically where it was, do you recall the time of day?

A It was light out. I remember it being cold. I think it was in the morning but, there again, it may have been afternoon. I'm not certain. It was light.

Q Do you recall at that conversation what you said to Mr. Branti and what he said to you?

A I told him I needed a job and he said it wasn't up to him or something like that.

Q Do you recall his exact words to you?

A Not with definite certainty. I could be close, but I couldn't be certain.

Q So, when you now testify that Mr. Branti said to you it wasn't up to him, that's your best recollection of the conversation, isn't it?

A That's a certain recollection. That I remember very definitely. That's something I did not forget.

Q Were those his exact words to you or weren't they?

[542]

A I don't remember his exact words. I remember the import of his words and that was precisely the import of his words.

Q That was your conclusion of the import of his words, am I correct?

A That is correct.

Q Do you recall having any other conversation with Mr. Branti after the November 1977 election?

A I probably spoke to Mr. Branti a number of times, perhaps on business of the office or otherwise, and I do recall Mr. Branti having testified and I believe his testimony in that regard.

MR. SCHOENBERGER: Once again, your Honor, I move to strike any reference to what Mr. Branti testified to by the witness.

THE COURT: He is adopting Mr. Branti's testimony.

I suggest we move along.

MR. SCHOENBERGER: Okay, your Honor, I will do that.

Q Do you recall having a conversation with Legislator Isaac Goodfriend?

A I had one telephone conversation that I have a very definite recall of. If

I saw Mr. Goodfriend around town, I probably had other conversations with him. [543]

Q That one telephone conversation that you have a good recall of, is that the one where you asked him whatever help he could give you in being reappointed assistant public defender?

A Yes, I said other things to him, but I did say that to him, too, yes.

Q What else did you say to him in that phone conversation?

A I said, "Ike, if you remember, I was appointed by Arnold."

I tried to give him some background and basis for helping me. Mr. Goodfriend knows me and I tried to in a few words, because it was a very short conversation, I tried to give him some of my credits so he could push for me.

Q Do you recall offering Mr. Goodfriend the opportunity to place a sign, his campaign sign, a political sign on your lawn?

A I very definitely did do that.

Q Excuse me, you very definitely did make the offer, am I correct?

A Yes.

Q Did Mr. Goodfriend accept the offer? [544]

A No, he didn't accept or decline. He said "Thank you," but never asked me to do that for him.

Q Mr. Finkel, were you ever involved with determining the eligibility of an indigent in the Public Defender's Office?

A In a way, yes.

MR. SCHOENBERGER: May we approach the bench, please, your Honor?

THE COURT: Yes.

(At the bench.)

MR. SCHOENBERGER: Your Honor, all I want to say to your Honor is that I am about to approach an area that we have discussed and that you requested that the attorneys approach the bench prior to entering into any testimony in open court on.

THE COURT: Tell me in substance what you plan to do, Mr. Schoenberger.

MR. SCHOENBERGER: I intend to examine his eligibility and ineligibility for the Public Defender's office.

MR. WAGNER: Would it be better to go in chambers, your Honor?

MR. SCHOENBERGER: There was testimony January 6th of who made the determina-

tion of eligibility and very definite [545]
statements by the witness in that regard.
I am going to ask him if he ever represented eligible indigents in his private practice while he was a public defender.
I intend to ask him whether he ever represented ineligible indigents.

THE COURT: Will you tell me what that has to do with the issues in this lawsuit?

MR. SCHOENBERGER: Your Honor, Mr. Finkel, through both his papers and his testimony, has attempted to bring out to this Court that he is competent to be an assistant public defender and that he was doing his job competently.

I intend to bring out testimony to show that both of those things, and this will be a court determination, of course, are not true.

I think it is very relevant to the issue of competence if there are violations of statutes involved --

THE COURT: The issue of competence only comes in here to the extent that Mr. Branti knew about his competence

or incompetence and took it into consideration as a factor in making a decision.

Mr. Branti has already testified that he regards him as competent. That testimony, so far as I can see, makes [546]
any testimony with respect to incompetency irrelevant because it is your position, as I understand your position, that the selection was made by Mr. Branti.

Unless you are taking the position that Mr. Branti has previously lied to this Court, I rule now that any testimony along the lines that you are suggesting, strictly testimony with respect to matters that did not come to Mr. Branti's attention and at the time that he made a decision not to appoint this man as a public defender is irrelevant.

MR. SCHOENBERGER: If your Honor pleases, there is also testimony by Mr. Barone concerning the operations of his office, concerning what is or rather what would be a conflict of interest in representing criminal defendants in a private practice. Those stages of the transcript are within the memorandum of law that we submitted to the

Court. This relates directly to the credibility of Mr. Barone, one of their best witnesses, and it relates directly to the credibility of Mr. Finkel, a plaintiff in this case.

I therefore must take exception to your Honor's ruling. I think it is very much admissible.

THE COURT: now you have changed your argument. As I understand it, you are..now arguing that it is admissible, not on the grounds of relevancy but on the grounds of it being relevant to the man's credibility. [547]

MR. SCHOENBERGER: In our memorandum of law that we submitted to you, there were four or five grounds or conclusions that we put in our memo as to why we felt the various testimony would be admissible. One of them dealt with the credibility of Mr. Finkel and the other one dealt with the credibility of Mr. Barone.

We have Mr. Barone in the hall waiting to be called as a witness and we intend to call him as our next witness. Mr. Apotheker will be examining him, but I think we'll be going into this same area at that time.

Once again, if your Honor recalls

Mr. Barone's testimony, his testimony was very specific as to what instances an assistant public defender could represent a client in private practice. The evidence that we will adduce will go directly to that credibility, directly to the running of his office.

There has been other testimony concerning the competence and the reputation of Mr. Barone in his office. I believe Mr. Colman testified just last Wednesday that he did not believe that the Public Defender's Office enjoyed a good reputation.

It was in reference to a question concerning Mr. Tabakman. I believe he was asked whether he passed on the request by [548] Mr. Dusanenko or recommendation to the caucus of Mr. Tabakman and he said he did not. One of the reasons he answered that question that way, it is my recollection, had to do with the reputation and competence of Mr. Barone's Office. Mr. Finkel is also within that office.

THE COURT: Let's talk about Mr. Finkel for a minute. You say that this evidence which you seek to elicit should be ad-

missible because it affects Mr. Finkel's credibility.

What has Mr. Finkel testified to which contradicts in any way what either Mr. Branti has testified to or anybody else has testified to in this case?

MR. SCHOENBERGER: If your Honor will allow me, I will get the transcript from January 6th and you can see that Mr. Finkel, as I recall, testified that in no way whatsoever did he have anything to do with determining eligibility in Mr. Barone's office. He called Mr. Barone a dictator. He said those matters were solely determined by him.

THE COURT: I remember that.

MR. SCHOENBERGER: Now he says he did have involvement in determining eligibility. That was the last question I asked and that is when I approached the bench. [549]

I think that I should be able to explore the method of eligibility with reference to persons who come to the Public Defender's office for assistance, and Mr. Finkel's involvement in it, if any.

THE COURT: Mr. Schoenberger, I

am going to give you a warning and I want you to pay very close attention to the warning.

MR. SCHOENBERGER: Yes, your Honor.

THE COURT: We are dealing in this case with a substantial question of constitutional law in a developing area. There is no question in my mind but that ten years ago this question of constitutional law probably would not have been presented to any court.

You have an obligation as an officer of this court, just as Mr. Wagner does, to present this issue of law cleanly and it is no way to present it to go out scrubbing the woods of Rockland County for what dirt you can find on the plaintiffs in this case, particularly if that dirt is not relevant to the issues.

Now, I am very much concerned that what you want to go into reflects that sort of scurrying around to find some skeletons in various closets which might be very, very relevant if Mr. Branti had made decisions predicated on knowledge of those skeletons, [550] but he has testified he didn't.

So, I'm not going to make a ruling

in advance on the questions you are about to ask, but I am going to take a half hour recess at this point and I am going to ask you to consider with your client and with your cocounsel very carefully what your obligations are in this situation.

It may very well be that this case, however it is decided, will be upped two more steps and you and counsel for the Plaintiff are going to go up with it as part of the record, if not as counsel, and I just want to be sure that you go up in a posture that you will be proud to go in.

So, I am going to leave it at this stage. We will take a half hour recess.

MR. SCHOENBERGER: Thank you very much, your Honor. I understand what you are saying to me and I appreciate it. Thank you.

(Recess.) [551]

(In the robing room)

THE COURT: Immediately before we took a recess, I had a bench conference with Mr. Schoenberger and Mr. Wagner, and Mr. Schoenberger has now said that, having spoken to Mr. Wagner, he would like to continue the discussion that we had prior to the recess in chambers, and here we are.

Mr. Schoenberger?

MR. SCHOENBERGER: Your Honor, we discussed this in the hall, and I explained it to my co-counsel and the defendant, both of whom, as you know, are attorneys, and we took special regard to your Honor's words, being attorneys, and the words coming from your Honor, from this Court.

We felt, after discussing it, that perhaps rather than proceeding the way we had originally intended with Mr. Finkel and then Mr. Barone, we perhaps should excuse Mr. Finkel at this time, subject to cross-examination on what has already been asked, and proceed directly with Mr. Branti.

Depending on Mr. Branti's testimony, the cross-examination that flows from it, we would like to then either make a suggestion to resolve this matter at that time or proceed. [552]

Once again, this is a determination we will have to ask the Court to make at that time.

THE COURT: Is that satisfactory, Mr. Wagner?

MR. WAGNER: I have no objection, your Honor, with the provisio that should

we get into a sensitive area, counsel will approach the bench, because a sensitive area could arise during the questioning of Mr. Branti as well as Mr. Barone or Mr. Finkel.

THE COURT: The sensitive area could be gotten into through Mr. Wagner as well as through Mr. Schoenberger.

MR. SCHOENBERGER: Your Honor, I believe we advised the Court that there was other evidence that would be forthcoming that would also be of a damaging nature. We did not make an offer of proof as to that evidence, your Honor. It is all, as I recall, evidence that existed prior to Mr. Branti making his determination as to this appointment as a Public Defender and which he is prepared to testify he knew about and took into consideration.

*

[556]

Branti-direct

"Q You have conceded, I believe, without question that Mr. Tabakman and Mr. Finkel are competent attorneys and were properly performing the functions of their jobs at the time you took office; is that correct?

"A I think I said that I thought

Branti-direct

they were competent attorneys. I never made any indication on whether they were properly performing their functions as Assistant Public Defenders."

Do you recall that answer?

A Yes, sir.

Q Mr. Branti, did you appoint the Assistant Public Defenders?

A Yes; I did.

Q What qualities did you look for when you appointed your assistants?

A Well, the first quality I looked for was someone that I knew, someone that I trusted. I looked for people that I could work with, people that I could train to my way of thinking. I looked at their experience. That was not the sole issue or determining factor that I used, but it was important.

I was interested in whether any person that I appointed, if they cared about people. In my opinion, that basically is the qualities that I was looking for.

[557]

Q Did you review the existing staff of the Public Defender's office before you made your final determination?

A Yes; I did.

Q And did you make personal observations about the members of the Public Defenders office while you were an Assistant District Attorney?

A Yes; I did.

Q What were those personal observations?

A Whom are we talking about now?

Q About Mr. Tabakman.

Did you personally observe Mr. Tabakman as an Assistant District Attorney while you were an Assistant District Attorney and while he was an Assistant Public Defender?

A Yes, sir. On a limited basis. I did not see him every day. I have seen him make bail applications; I have seen him on conferences. I did have the opportunity to pick or select a jury with Mr. Tabakman on a particular case that we had.

Those were my personal observations.

I also discussed him from time to time -- and I don't mean in this particular instance -- with members of the District Attorney's office. [558]

Q What was your impression of how Mr. Tabakman conducted himself as an Assistant Public Defender?

A Well, I indicated on January 6, when I testified, that I thought he was a competent attorney. I still believe that he is a competent attorney. I believe he showed great promise. I will say that for him.

However, I don't believe he was ever really interested in being a criminal lawyer. My observations of him are simply that he was at least interested to get back to his private practice as he was with whoever he was dealing with firsthand.

Q Did you believe that he had the qualities that you were looking for regarding caring about the people he represented?

A Well, he never indicated to me in any particular case or gave any indication that he didn't. I just didn't see it in him when I had an opportunity to observe him.

Q Did you have any discussions with regard to Mr. Barone's staff with Mr. Feinberg and Mr. Nelson?

A Yes. We had discussions, primarily with Mr. Feinberg.

Q What did you discuss with Mr. Feinberg about the existing staff? [559]

A The first thing we were interested in, naturally, when I spoke with Mr. Feinberg, we do handle a great deal of minorities in the Public Defender's office. There was no question in my mind that Mr. Nelson was an extremely competent attorney. He was also a black attorney. We felt it was incumbent that if Mr. Nelson desired to stay on in the Public Defender's office we wanted him to stay on. I wanted him to stay on in the Public Defender's office.

We also -- we discussed Mr. Sanchez. He has a Spanish name. He is Philippino, and I believe he's Spanish-speaking, and again, from my particular home town, there is a great Spanish population, and we thought it was important to have Mr. Sanchez stay, although at that point I had not made any decision on whether or not he would.

He did have an excellent reputation among the Assistant District Attorneys as being very, very tenacious. As a matter of fact, he was by many of the Assistant District Attorneys disliked because of that particular attitude that he had.

Q Did you discuss the staff of Frank Barone with Mr. Barone?

A Yes; I did. [560]

Q Did Mr. Barone know that you were keeping Mr. Nelson?

A Yes; he did. When he originally asked me to come in and sit down with him, I suggested to Mr. Barone that I wanted Mr. Nelson present when I spoke with him, because Mr. Nelson was staying on, and Mr. Nelson was his chief assistant.

He suggested to me that we would have a series of meetings, but at the first meeting he would prefer not to have Mr. Nelson present.

I didn't agree with it, but he mentioned it a few times, so that in fact on the first meeting I did speak with Mr. Barone alone.

* [565]

THE COURT: Well, to the extent that is an objection, I will overrule it, Mr. Wagner.

Read the question.

(Question read)

A No. He didn't say why he was blaming the District Attorney for his troubles, but it's been my opinion and my observations of Mr. Barone since 1974 --

THE COURT: Objection sustained.

Q Did Mr. Barone recommend Mr. Tabakman --

THE COURT: Everything in the last answer from "but" on will be stricken.

Mr. Branti, please listen to the questions and answer the questions and don't volunteer.

Q Did Mr. Barone recommend Mr. Tabakman?

A Yes; he did. he asked me if I intended to keep Mr. Tabakman on. I believe I said I hadn't made any decision on any members of his staff at that point. I did ask him if Mr. Tabakman was still a member of the partnership of Freedman, Wray, Wagner & Tabakman.

Mr. Barone indicated that he was, but he didn't see any problem with it. I said, "Well, I see a problem. That's your opinion," or words to that effect.

Q Did you ask him if Mr. Sanchez was still with the firm? [566]

A Yes. I believe the next recommendation was for Mr. Sanchez, after Mr. Tabakman, and I asked, "What is Mr. Sanchez'

situation with the firm? Is he a partner?" He said, "No. I don't think he's a partner. He does have an association, although it merely be a space agreement. He wasn't sure.

Q Did Mr. Barone recommend Mr. Finkel?

A Yes. I'm trying to do it in the order in which he made the recommendations to me. After Mr. Tabakman, yes, the next individual he recommended to me was Mr. Finkel.

Q What did he say about Mr. Finkel?

A That he was reliable. He said, "You had an opportunity, you know Aaron. He's a nice man, not the greatest lawyer in the world, but he's a reliable attorney."

Q Did he recommend anybody else?

A Actual recommendations; no, sir.

Q But the first and foremost recommendation was Mr. Barone; is that correct?

A That's right.

Q Mr. Branti, what criteria did you use in seeking the reappointment of Messrs. Nelson, Sanchez and McAlevey?

A First of all, they were in my opinion competent, very competent attorneys. [567] Mr. Nelson was a fine trial attorney. I had worked with him in the District Attorney's

Office a few years prior to that. There was no question he cared about people.

I trusted Mr. Nelson, had confidence in him.

As far as Mr. McAlevey is concerned, he was the workhorse of the Public Defender's Office, from what I could determine from my observations of him.

Q And Mr. Sanchez?

A And Mr. Sanchez, again, because of his name, his appearance, the fact that he had the reputation in the District Attorney's Office as being very, very tenacious on every case that he handled. I knew he cared about people. I had seen him a number of times at the Human Rights Commission, representing not only the Public Defender's Office but I believe it was the Filipino Home Owners Association, or some group such as that, and I was impressed with him at those particular meetings.

Q Going with him over the list of your appointments, what criteria did you use when you appointed John Costa and so on?

A I knew John. I went to law school at St. John's University at night. John was a New York City police officer who attended the evening

session. He was one year ahead of me. [568]

John was the youngest man to make sergeant in the history of the New York City Police Department. At least that's what I had been told.

I was impressed with him. When I left law school, I went into the District Attorney's office. When John left law school he went into the Special State Prosecutor's Office. I met him at a number of seminars or workshops after law school while he was in the Special State Prosecutor's Office.

He was Italian. That played a factor in it. As far as I knew, I was the only Italian attorney in Rockland County working for the government.

Q What about Mrs. Lorna Bernard?

A Mrs. Bernard -- I believe I met her three or four years ago. She was running in a primary, I believe, for Family Court Judge. I knew she had been a judge or an acting judge in the Town of Orangetown, in one of the hamlets. I had seen her on a number of occasions handling criminal matters, and Mr. Feinberg and I had discussed previously that we wanted at least one woman on the

staff of the Public Defender's Office, particularly for the Town of Clarkstown.

Q Why the Town of Clarkstown? [569]

A Because most of the major shopping centers are in the Town of Clarkstown. They handle -- I would say it must be thousands of cases of shoplifting. A good portion of those individuals are females.

Q What about Wayne Feinberg? What criteria did you use when you appointed Wayne Feinberg?

A First, Wayne Feinberg was one of my closest friends. I worked with Mr. Feinberg in the District Attorney's Office in '73 and '74, I believe. He then left to go to the County Attorney's Office.

In my opinion, he is an excellent criminal attorney, a close friend, someone that I could confide in.

Q And trust absolutely?

A Absolutely.

Q How about John allison?

A I met John Allison -- excuse me. I shouldn't say I met John Allison. I met John Allison while he was a member of the District Attorney's office. He was a young

man with no kidneys, and he was trying to establish a law practice. Three nights a week he went on a dialysis machine. And I was impressed with him, and I went to the District Attorney and asked him if he would hire John Allison that I would take the responsibility for Mr. Allison if he could not keep up because of his health problems, [570] and the District Attorney hired him.

I broke him in at the grant jury system. He then went on to become an attorney and an assistant district attorney in the lower courts, after a -- probably an eight-month period of working with me in the grand juries.

It reached a point where John couldn't keep up with the work load. He had had two kidney transplants, and neither of them took, so to speak.

I believe it was April or May of 1977, I was in the District Attorney's office, speaking with the DA, and Mr. Allison asked if he could come in to speak with us. He indicated at that point that he wanted to leave the DA's office and perhaps get a job in the Public Defender's office if there were one available. I don't know at that time if there was.

I asked John at that point with the DA present if he would stay until the end of the year, that I intended to seek the position of Public Defender, that if I got the position he certainly would come with me to the Public Defender's office, and if I didn't, I would personally make every effort to attempt to have him receive an appointment in the Public Defender's office.

He agreed to stay on, and I in fact appointed him. [571]

Q How about Gerald Blumenfeld?

A I have known Mr. Blumenfeld for a number of years. In my opinion he is an excellent attorney. He is a Certified Public Accountant. He is a former Village judge or justice. I believe it was July or August of 1977 I was making a speech at the Haverstraw Rotary Club. Mr. Blumenfeld had been a member, was a member -- is a member of the Haverstraw Rotary Club. I was speaking of the state of the criminal law in Rockland County and the operation of the District Attorney's Office.

After lunch, after I had given my speech, we sat around and had a drink or two. He asked me what my plans were, if I were going

to continue in the District Attorney's office. I said "No. I hope to be the Public Defender in Rockland County," and asked him at that time if he might be interested, and he said he would certainly give it some consideration, and I in fact appointed Gerald Blumenfeld.

Q And what about John McCabe?

A John McCabe, sir, is a very dear friend of mine. I've know him all my life, known his family. I grew up with John McCabe.

John McCabe left the practice in the City of New York about three years ago, when his father passed away -- I would say about [572] two years ago -- to run the family business. He is the editor of a newspaper. He is an extremely competent writer and a brilliant legal mind.

I know Mr. Feinberg spoke to me once or twice about Mr. McCabe. I believe Mark Parris spoke to me once about Mr. McCabe. Mr. McCabe was in fact recommended by the Caucus, and I appointed John McCabe.

Q Did you trust John McCabe?

A Absolutely.

Q Mr. Branti, as an Assistant District Attorney, were you aware of the number of in-

dictments disposed of by the Public Defendet's office?

MR. WAGNER: Objection.

THE COURT: Overruled.

A Yes; I think so. In 1977, the Public Defender's Office disposed of 115 felony indictments, and out of those 115 felony indictments only seven people exercised any constitutional rights whatsoever.

Q Mr. Branti, as a result of your experience as an assistant district attorney, was Mr. Finkel properly performing the functions of his office as an assistant public defender?

MR. WAGNER: I object, your Honor. He said he was competent, I believe that disposes of the question.

* [574]

THE COURT: To the extent that those examples are elicited on direct, you are going to have an opportunity to cross-examine him on them.

I will overrule the objection.

THE WITNESS: Would you read the question?

THE COURT: Mr. Stenographer --

(Question read.)

THE COURT: I believe you should more precisely limit the question.

MR. APOTHEKER: Prior to assuming his duties as a public defender. That is my question.

THE COURT: All right.

(To the Witness) Do you understand the question?

THE WITNESS: Yes; I understand the question.

THE COURT: All right. Go ahead.

A I observed Mr. Finkel since 1973 in the County Court, at conferences. I have read some preliminary hearings that he has conducted in the local courts prior to the cases going into the grand jury. In my opinion, I don't believe he was properly performing his functions as an assistant public defender, had he worked for me. He may very well have been properly performing in Mr. Barone's view, but [575] not mine.

Q Did you believe you could trust Mr. Finkel?

A No.

MR. APOTHEKER: Your Honor, may we approach the bench?

(At the bench.)

MR. APOTHEKER: Your Honor, we are going to get into an area now that has nothing to do with the offer of proof but is an example of why Mr. Branti did not feel he could trust

Mr. Finkel, and it has to do with the time that Mr. Finkel violated what Mr. Branti thought was a confidence of Mr. Finkel's office.

THE COURT: Was this something that happened prior to December of 1977?

MR. APOTHEKER: Yes.

THE COURT: And that came to Mr. Branti's office prior to December of 1977?

MR. WAGNER: I won't object at this time, your Honor. I don't know where we are going, but --

THE COURT: All right.

MR. APOTHEKER: If I could just have a moment, your Honor.

There will also be, along the same lines of trust, testimony regarding Mr. Finkel's representation of a client as a [576] public defender with Mr. Branti on the other side that Mr. Branti knew about and of course knew about because he was the assistant district attorney.

I just want to make that clear.

THE WITNESS: Why do we have to put it on the record? I don't want to kill anybody.

THE COURT: Just one second, please.

Mr. Branti, you have two lawyers here. They are both very good.

MR. SCHOENBERGER: Thank you, your Honor.

MR. FINKEL: Your Honor, I believe I am aware of what Mr. Branti and his attorney are referring to, and I am perfectly willing to address myself to the issue. The press is present, and although I believe the incidents are meaningless and well meaning and could be explained, I would prefer that it be done in the absence of the press.

THE COURT: How much longer do you think that you are going to be on direct examination?

MR. APOTHEKER: I think we should finish it up before lunchtime. Possibly not. I believe we have a half hour or 45 minutes.

THE COURT: is there anything else that you want to cover?

MR. APOTHEKER: At the bench, your Honor? [577]

THE COURT: No, before we take this testimony in camera, in chambers.

MR. APOTHEKER: there could be other testimony in camera.

THE COURT: My thought was if we went on with the material that is not covered by this bench conference and adjourned at one o'clock, we could take up the other point in chambers.

MR. APOTHEKER: All right, your Honor.

(In open court.)

BY MR. APOTHEKER (Cont'd):

Q Mr. Branti, I show you a copy of the New York Bar Association opinion regarding whether it is permissible for a town Justice and an Assistant Public Defender to be partners and ask you if you have read that opinion.

MR. WAGNER: Excuse me, Mr. Apotheker. Is that the opinion that was attached to your papers?

MR. APOTHEKER: yes, sir.

A Yes. I remember it.

MR. APOTHEKER: Your Honor, at this time I would like to formally introduce this in evidence. I believe we had made the affidavit part of the record, but I would like to have this marked as an exhibit.

THE COURT: Just a minute. I am not sure I understand the testimony you [578]

have just elicited.

MR. APOTHEKER: I asked Mr. Branti whether he read this opinion.

THE COURT: When did you read it, Mr. Branti?

THE WITNESS: The early party of January. I was aware of the opinion.

THE COURT: What is the relevance of it?

MR. APOTHEKER: Your Honor, I am just offering it at this time. It could have been offered at any other time. It was part of the affidavit, and I do want to offer it as an exhibit for the record.

THE COURT: You are not offering it as being in any way relevant to the testimony? Since he read it in January, it would seem to me it is a matter of complete indifference as far as I am concerned.

MR. APOTHEKER: I want to ask Mr. Branti if he had an opinion other than the opinion of the Bar Association.

MR. WAGNER: No objection, your Honor.

(Defendants' Exhibit C received in evidence.)

Q Mr. Branti, I believe you testified that you did not read that Opinion until some time in early January 1978. What was your opinion regarding an assistant public defender and a town Justice could properly be law partners? [579]

A In my opinion it would be a conflict of interest.

Q Did you hold that opinion prior to 1977?

A Yes; I did.

Q And did you have a conference with Mr. Barone in which you told him about that possible conflict of interest regarding Mr. Tabakman?

A I didn't say it was a conflict of interest when I spoke with Mr. Barone. I asked Mr. Barone if Mr. Tabakman was a partner in Freedman, Wray, Wagner & Tabakman. He said, "Well, if he is, that's no problem." I said, "That's your opinion."

Q Did you at any time foresee a problem?

A Certainly.

Q And do you foresee a continuing problem in your office regarding that conflict of interest?

A Oh, I certainly see a problem, in that the Bar Association has indicated that it is a conflict of interest. I am forced to keep Mr. Tabakman on my payroll. He is a member of my staff at this point, while he is not handling any cases. Judge Wray is sitting in the town of Clarkstown, and he is also aware of the ethics opinion of the Bar Association. I see a problem with any case in Clarkstown and in particular any case that is pending before Judge Wray? [580]

Q Mr. Branti, I show you this opinion of Judge Gagliardi, plaintiffs' Exhibit 11 in evidence, and ask you if you would read that opinion.

(Pause.)

A Yes, sir.

Q After reading that opinion of Judge Gagliardi --

A I didn't read the second page. Excuse me.

(Pause.)

Q After reading that opinion of Judge Gagliardi, in the Ninth Judicial District, did this opinion of the Ninth Judicial District in any way change your mind or change your opinion

regarding your feelings as to whether it was a conflict of interest for Mr. Tabakman and Judge Wray to be law partners if Mr. Tabakman was an assistant public defender?

A No. My opinion has nothing to do with the Bar Association opinion. It doesn't change my opinion.

MR. WAGNER: I ask that anything except "It doesn't change my opinion" be stricken.

THE COURT: It will be stricken.

Q Does this opinion of the Ninth Judicial District in any way change your opinion -- [581]

THE COURT: Isn't that the question you just asked?

MR. WAGNER: That was my objection, your Honor.

THE COURT: You objected to something in the answer.

MR. WAGNER: My objection to this question was going to be that the witness just answered the question.

THE COURT: Very well. The witness has just answered the identical question.

Let's move along.

Q Mr. Branti, was Mr. Tabakman in your opinion properly performing the functions of an assistant public defender?

A In my opinion, no.

Q And did you reach that opinion prior to or during December of 1977?

A It was my opinion of him in '76 and '75, also.

Q Why did you have that opinion?

A My main reason for it was simply that he was more concerned, in my opinion, with his private practice than he was with the defendants he was representing.

Q Did you feel that there may have been an improper relationship between the Public Defender's office and the law firm of Friedman, Wray, Wagner and Tabakman? [582]

A Yes. I so testified on January 6th.

Q Were you aware of approximately how much money in salaries went from the County to that law firm?

MR. WAGNER: Objection, your Honor, on two grounds. First of all, the money did not go to that law firm. These were individual employees of the County. Second, this question was raised on January 6th. It is a matter of

arithmetic. We can stipulate to the salaries of public defenders for the last several years. I don't see the relevance of it, but we can certainly agree on the mathematical quantity.

MR. APOTHEKER: I asked if he was aware, your Honor, in December of 1976.

THE COURT: Overruled.

(To the Witness) Were you aware in 1977 and 1976 how many persons in the Public Defender's Office were members of law firms?

A Yes; I was.

Q Did you trust Mr. Tabakman?

A He seemed trustworthy. Let me put it that way. There was one personal incident, that I do not wish to discuss, that affected my opinion of Mr. Tabakman.

MR. APOTHEKER: Your Honor, at this time I request that we adjourn. [587]

*

A I met Mr. Dusanenko, I believe, at a breakfast for Mr. Zebrowski probably the middle of the month. At that point he congratulated me. He heard that I was going to be nominated by the Democratic Party for

Public Defender. He asked me if I would keep Mr. Tabakman on in the office. I indicated to him at that time that most of the decisions had been made. There were some limited positions left. I was waiting to see what recommendations were being made to me by the Democratic Caucus before I made any further decisions.

At that point I mentioned an individual by the name of Bill Butera. And I asked him if he knew him. He was also a Clarkstown resident. Mr. Dusanenko was very adamant on that and said "Butera has a job, I'm not concerned about Butera. I'm only concerned with those that haven't. I want Tabakman to stay in the office."

He got quite adamant about it. At one point in it he said to me, "The fucking Jews from Ramapo want to run the whole county."

Q Those were his exact words?

A They were his exact words. "You go tell them that you need twelve votes before you can have any bonding resolution. If I don't get Tabakman, I'll make sure that they don't get the twelve votes in the Legislature."

[589]

Q Did you speak to Harriet Cornell, Democratic Chairperson?

A Yes, I did.

Q What was the conversation or conversations you had with Mrs. Cornell?

A I believe the first conversation I had with Mrs. Cornell was early in December. She called me one morning at the District Attorney's office and indicated to me that I would be the Democratic nominee for Public Defender.

At that point I indicated to Mrs. Cornell that I was pleased and I was happy with the position. I realized I had not been elected to the post, and I wanted the Democratic legislators to have some input into the office, but I wanted her to make it clear to anybody she spoke to that in the end I would make the appointments regardless of who was recommended to me, I would decide who would be appointed.

Q Of all the people that were mentioned, all of the legislators and political people, it is your testimony that the only one who pressured you in any way to appoint anyone was Legislator Dusanenko with regard to Mr. Tabakman?

A Yes, sir. [591]

(In the robing room.)

THE COURT: So the record indicates what we are doing here, Mr. Apotheker indicated this morning that he had some sensitive areas that he wished to examine Mr. Branti with respect to and suggested, and Mr. Wagner agreed, that the examination should take place in chambers.

Mr. Wagner has indicated that he would prefer to have the entire direct examination, including the examination into these sensitive areas, covered before he begins his cross.

So, since Mr. Apotheker has indicated that the non-sensitive portion of the direct examination is completed, why we are ready to proceed with the sensitive portion of direct examination.

BY MR. APOTHEKER:

Q Mr. Branti, I believe you testified earlier on direct examination that you felt Mr. Finkel was not properly performing his functions as an Assistant Public Defender?

A That is correct.

Q Were you aware, prior to assuming your duties as Public Defender, of a time that Mr. Finkel violated the confidence of his office?

MR. WAGNER: Objection, your Honor, as leading. [592]

THE COURT: I will overrule that objection but caution you that I don't want any more leading, Mr. Apotheker.

MR. APOTHEKER: Yes, sir.

A Yes, sir.

Q Could you tell the Court about the time that you felt Mr. Finkel violated that confidence, and what that confidence was.

A Yes, sir. It was sometime in the late summer or early fall.

Perhaps I can clear it up. In Rockland County, your Honor, on our calendars, you have a number and a defendant's name and a chart. Under the number it indicates the Assistant District Attorney that is handling that particular case.

In Rockland County Mr. Gribetz, who was the District Attorney, does handle cases on a personal basis. He does take them and he will try the cases.

His name appeared on a file and appeared on a calendar, and the case, I believe, was assigned by the Public Defender's office to Mr. Finkel.

For some reason, in my opinion if everything that was told to me was true, it was foolish --

MR. WAGNER: Objection, your Honor, [593] as to what was told to the defendant unless he can show some relevance and who told him.

THE WITNESS: It concerns Mr. Finkel.

THE COURT: Just one second, please.

The testimony that we are getting from Mr. Branti, I take it, is to indicate what was known to him as of the time he was appointed Public Defender and had the problem of choosing Assistant Public Defenders, and whether it was told to him or whether he read it in the newspaper or whether he imagined it, if it was something that he drew on in making appointments, it seems to me it is relevant.

I will overrule the objection.

A In any event, Mr. Gribetz, I believe, started to prepare the case for trial.

THE COURT: Is this something Gribetz told you?

THE WITNESS: Yes, sir.

MR. WAGNER: Your Honor, in that case I have to renew my objection. It is hearsay. If Mr. Gribetz wants to testify to it, that's perfectly all right.

THE COURT: Mr. Gribetz wasn't making the decision; Mr. Branti was making the decision, and whether it is true or not at this stage is not really very important. It's what this man, this witness, had in his mind at the time that he made these decisions that is significant. [594]

I will overrule the objection.

A As I stated, Mr. Gribetz began preparing the case for trial. Mr. Finkel approached Mr. Gribetz and said, "My office is attempting to set you up. My name appears on the file, but at the last minute, when you go to court, one of the other Assistants is going to come into court and try this against you."

Whether or not that was true, I thought it was quite foolish, but what bothered me about it is that if, in fact, it were true, Mr. Finkel, I know, did come to see Mr. Gribetz

about it, if he would do this to Frank Barone, who he worked for for six years, I was sure he would do it to me on a moment's notice.

That was one of the determining factors that I used to consider Mr. Finkel.

Q As a result of that occurrence, did you have a feeling of non-confidence and non-trust in Mr. Finkel?

MR. WAGNER: Objection, your Honor, leading. In fact, your Honor, he is putting words in his mouth.

MR. APOTHEKER: I withdraw the question, your Honor.

Q How did you feel about Mr. Finkel after that occurrence?

A I certainly didn't want him working for me either in the District Attorney's [595] office or in the Public Defender's office.

Q Did there come a time--

THE COURT: Just one second.

When did you learn about this incident between Mr. Finkel and Mr. Gribetz?

THE WITNESS: Probably late, or early fall, October in 1977, your Honor.

THE COURT: How did you learn about it?

THE WITNESS: Mr. Gribetz came to me and told me what the situation was. As a matter of fact, I think he asked me to look into the case to see if there was a problem we were not aware of in the case.

THE COURT: Mr. Apotheker.

Q Did there come a time when you had a conversation with Mr. Barone about this occurrence?

A Yes. Mr. Barone, I believe it was January 6th, called me at my house after we left this particular court and asked me -- I had told him prior to that that one of his men had, in my opinion, betrayed a confidence of his, and I didn't go any further with it -- after the appearance here on January 6th he called me at my home in the evening and asked me if I would tell him, he was interested in who it was and what it was about, and I did. [596]

Q Mr. Branti, did there come a time when you were involved as a District Attorney with Mr. Finkel, who was representing someone form the Public Defender's office?

A Yes, sir.

Q Did you reach, as a result of that

meeting or case, did you reach a conclusion about how Mr. Finkel operated as an Assistant Public Defender?

A Well, at least on that particular occasion I did, yes.

Q When did that occur?

A 1976, sometime during 1976.

Q What was that occurrence?

A I had a case of armed robbery. I believe there were three co-defendants involved. I believe there were three. There may have been two, I can't specifically recall the name of the case. It occurred in the Town of Orangetown.

The defendant that the Public Defender's office was representing by Mr. Finkel was the getaway driver of the car.

We did not have an identification of this particular defendant at the scene of the crime; however, he was apprehended some forty or forty-five minutes later fleeing from the car that had been involved.

In any event, the case had been presented to a grant jury, and an indictment resulted in the three, or two co-defendants, I can't recall whether it was three or two. [597]

We had some conferences on the matter. The case was getting ready to go to trial. I had approached Mr. Finkel and asked if his client would consider testifying against the other two individuals in return for a misdemeanor plea. There was no question I had, in my opinion, a difficult case against his client.

I believe at that point he rejected it and indicated that his client was innocent.

I believe the afternoon we were preparing to pick the jury or preparing to have a suppression hearing, I don't recall which, all three individuals entered pleas of guilty. The other two defendants, I believe, pled to robbery in the third degree, and Mr. Finkel's defendant pled to a misdemeanor, which I had originally offered, and as we left the courtroom I was smoking a cigarette in the hallway, and Mr. Finkel came up to me with a smile on his face and said, "You owe me one, because my man was innocent."

I was shocked, and I told him, "If your man was innocent, you should have gone to

trial, but, in any event, don't let anybody hear you talk like that."

Q Did those occurrences enable you to form an opinion as to whether Mr. Finkel was properly performing his functions as an [598] Assistant Public Defender when you were considering reappointing him.

A Those occurrences to me, sir, meant that, whether I was Public Defender or a private practitioner or District Attorney of Rockland County, Mr. Finkel was not going to work for me.

MR. APOTHEKER: No further questions, your Honor.

CROSS EXAMINATION

BY MR. WAGNER:

Q Mr. Branti, do you recall the name of this case involving armed robbery?

A No, I don't.

Q Can you tell us the name of any of the defendants who were involved?

A No, I can't. It was in a location that used to be Larkin's Bar & Grill in the Town of Orangetown, I believe.

MR. WAGNER: May I have just a minute, since this is the first time I have

heard this information, and I would like to speak to Mr. Finkel?

(Pause)

Q Mr. Branti, you said this case that you had, this armed robbery case you had, occurred in 1976?

A I'm sure it was '76. It may have been late '75.

* [648]

THE COURT: Gentlemen, I understand that that concludes the case from the point of view of both sides, and I would suggest this now as the briefing schedule: that simultaneous briefs will be submitted by plaintiffs and defendant on February 24, and any responsive briefs will be served by both sides on March 3.

It is understood that the temporary restraining order will remain in effect until decision is rendered.

MR. APOTHEKER: your Honor, does that mean served and filed by March 3? Or served on March 3?

THE COURT: It means served and filed on both those dates, on February 24 and on March 3. Anything further, gentlemen?

MR. WAGNER: Thank you, your Honor. Nothing further for the plaintiffs.

MR. APOTHEKER: Thank you, your Honor.

MR. SCHOENBERGER: Thank you, your Honor.

THE COURT: Thank you, gentlemen.

Time noted: 5:03 p.m.